

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



August 11, 2000

To: Interested Parties

Subject: **Request for Proposal (RFP) #400-00-401, Addendum #1**
Targeted Solicitation for the Buildings Energy Efficiency Program Area

Notice is hereby given that the above referenced RFP has been revised. The information provided below indicates the changes to the language in the RFP, and states which forms (Attachments and Exhibits) are being replaced due to revisions. Copies of the revised forms are included with this notice.

This package consists of:

Section 1	RFP LANGUAGE REVISIONS
Section 2	FORMS CHANGES, Attachments and Exhibits have been revised and are attached.
Section 3	QUESTIONS AND ANSWERS
Section 4	PRE-BID CONFERENCE SIGN-IN SHEET

Except as amended herein, all other terms and conditions of this RFP remain as previously written.

We look forward to receiving your Notice of Intent to Bid on August 25, 2000 and your proposals no later than **5:00 p.m. on September 14, 2000.**

Sincerely,

PEG PIGEON
Contracts Officer

Attachments, 4 Sections

SECTION 1
LANGUAGE REVISIONS

(Note: This addendum has five language revisions. Additions are shown below **underlined in bold**, and deletions are shown in ~~strike through~~)

- 1) Refer to Page 20 of the RFP, Question 28, number 6 is amended as follows:

"Volume 2 *must* contain...

6. Program Director and Program Team (**Attachment 2.2**)"

- 2) Refer to Page 21 of the RFP, Question 30, Paragraph C is amended to read:

"Buildings Energy Efficiency Program Issues, Goals and Objectives

Summarize the work to be performed, and explain....

"Impacts and Benefits to California

Explain how the proposed program will improve the affordability of electricity, maintain or improve the reliability and quality of electric power, reduce the environmental and public health impacts from electricity use, and provide benefits to local and state economies.

"Program Connections to the Market

A key objective of the PIER Program is to conduct RD&D activities...."

- 3) Refer to Page 48 of the RFP, Question 56 is amended to read:

"Term of the Contract

The term of the contract(s) is anticipated to be April 1, 2001 to ~~April~~ **March** 31, 2005."

- 4) Refer to Page 49 of the RFP, Question 57 is amended to read:

"Withdrawal/Modification

A Bidder may, by letter to the Contract Officer, withdraw or modify a submitted proposal before September ~~13~~ **14**, 2000, at 5:00 p.m. Proposals cannot be changed after that date and time."

- 5) Refer to Page 52 of the RFP, Question 64 is amended to read:

"This RFP package contains the:

- instructions governing the requirements for a ~~fixed quotation~~ **proposal** to be submitted by interested Bidders,...."

- 6) Section IV Proposal Format and Required Documents, Question 35, Detailed Budget, beginning on page 26, has been revised and is **replaced** with the **attached** Question 35.

Language Revisions, con't

(Note: Additions are shown **underlined in bold**, and deletions are shown in ~~strikethrough~~)

Section IV Proposal Format and Required Documents, question 35, Detailed Budget, beginning on RFP page 26, is revised as follows:

35. Detailed Budget

Program Budget

Using the categories identified below, prepare four itemized Exhibits C, Budget, as follows:

- an overall PIER reimbursable budget by element, including all element costs
- a budget containing only the Prime Contractor's costs, **identify DVBE's**
- a budget containing only the subcontractors' costs, **identify DVBE's**
- a match funded budget which documents all other sources of funding, **identify DVBE's-**

Use ~~the format (Excel files) in~~ Attachment 9, Exhibit C, **(Excel files)** to prepare these budgets.

Budgets for Start-up Tasks and Reporting Activities

For the Administrative Element, the budgets itemized for the Project Start-up Tasks and the Reporting activities (using the Exhibit C form) should only include the efforts required for the Program Director and the administrative staff. On Exhibit C, under the Project Technical Activities heading, include the following:

- 1) **Program Management and Administration;**
- 2) **Program Advisory Committee; and**
- 3) **Critical Program Review**

The budgets itemized for each technical project (also using Exhibit C) should include the project lead and project staff efforts for the Project Start-up Tasks and Reporting Activities.

If the Commission eliminates a certain project out of the overall program proposal, the Commission will eliminate the project budget, as delineated in Exhibit C for that project. This will include both the Project Technical Activities as well as the Project Start-up Tasks and Reporting Activities for this particular project

1. Personal Services

Include projected increases in hourly rates & fringe to cover each year of the contract period

- Direct Labor, including hourly rates, hours, classifications/names
- Fringe Benefits, percentage and applicable classifications

~~2. Subcontractors~~

~~List total cost by each subcontract, identifying those that are DVBE subcontractors, including hourly rates and fees for all individuals.~~

~~3.2. Operating Expenses~~

- Materials--Identify those materials that are estimated to be over \$5,000 in value and dedicated to the program.
- Equipment--Identify each piece of equipment that is estimated to be over \$5,000 in value proposed for purchase using PIER funds. Please refer to Attachment 9, Contract Terms and Conditions, for restrictions that apply to the purchase of equipment with State funds. Subcontractors supplying equipment must be budgeted in the equipment category. We usually suggest that equipment be purchased with match funds.
- Travel--Identify all travel expenses for the program for which reimbursement will be sought. Indicate the number of trips to be taken and the destinations and estimated costs. Please see Attachment 9, Terms and Conditions for travel reimbursement rates.
- Miscellaneous expenses--Any expense not included in any of the other categories.

4. Fees (attach audit documentation to verify rates)

You must include documentation in your cost proposal to support your General and Administrative rate and Overhead rate. If the Federal Defense Contracting Audit Agency (DCAA), any other governmental entity or private audit firm has audited and accepted your rates, please provide this documentation

- *Indirect Overhead Rate* -- list percentage, items covered and application to specific categories.
- *General and Administrative Overhead Rate*--list percentage, items covered and application to specific categories.
- *Fee (profit) Rate* -- list percentage, basis and application to specific categories. Profit cannot exceed 10%. The Prime Contractor is not allowed to add profit to subcontractor invoices.

5. Total Expenditures

- Sum of all the categories.

Contract program expenses will be reimbursed in accordance with the program budget included in the proposal. PIER Program funds can only be used to reimburse the Contractor for expenses paid by the Contractor, and can only be paid after the Commission has received and approved the deliverables due for the billing period. Expenses to be paid with PIER funds cannot exceed the total amount of funds requested in the program proposal and listed in the budget section of the contract without prior Commission amendment and authorization. Only expenses incurred during the term of the contract can be reimbursed.

Budgets for Start-up Tasks and Reporting Activities

~~For the Administrative Element, the budgets itemized for the Project Start-up Tasks and the Reporting activities (using the Exhibit C form) should only include the efforts required for the Program Director and the administrative staff. On Exhibit C, under the Project Technical Activities heading, include the following:~~

- ~~1)Program Management and Administration;~~
- ~~2)Program Advisory Committee; and~~
- ~~3)Critical Program Review~~

~~The budgets itemized for each technical project (also using Exhibit C) should include the project lead and project staff efforts for the Project Start-up Tasks and Reporting Activities.~~

~~If the Commission eliminates a certain project out of the overall program proposal, the Commission will eliminate the project budget, as delineated in Exhibit C for that project. This will include both the Project Technical Activities as well as the Project Start-up Tasks and Reporting Activities for this particular project.~~

NOTE: End of question 35., text revisions, RFP Question 36, page 28, continues as originally written.

SECTION 2
FORMS CHANGES

Attachment and Exhibits

Replace the following list of Attachments and Exhibits with the attached Attachments and Exhibits.

Attachment 1	Notice of Intent to Bid
Attachment 2	Application Form
Attachment 2.2	Program Team List, Key Personnel and Subcontractors
Attachment 4	Small Business and DVBE Certification
Attachment 9	Contract Documents, Terms and Conditions
	Volume 2, Technical Section, Example Formats
	Exhibit A, Work Statement – Element 1 (Administration)
	Exhibit B, Deliverables Schedule for Element 1
	Exhibit A, Work Statement – Element 2 (Technical)
	Exhibit B, Deliverables Schedule for Element 2
	Exhibit C, Program Budget
	Exhibit E, Pre-Existing Intellectual Property

ATTACHMENT 1

NOTICE OF INTENT TO BID*

RFP 400-00-401

RETURN TO CONTRACTS OFFICE BY AUGUST 25, 2000

1. Brief Program Title:

2. Organization Name & Address:_____

3. Contact Person: _____

Telephone: _____

Title: _____

Fax: _____

E-mail: _____

4. Market Sector. (Check the most relevant Buildings Sectors that apply)

_____ Residential

_____ Multi-Family

5. Draft Program Abstract (*No More Than 70 Words*):

* These notices will be held confidential until the due date for submitting proposals.

ATTACHMENT 2

Application and Program Information Form

RFP 400-00-401

The Proposal must contain **Attachment 2**, which provides the Commission with some basic information about your business to help us process your proposal.

1. Bidder Information

Full Legal Name of Bidder _____

Business Address _____
(Street number and name) (Mail stop/suite number)

(City) (County) (State) (Zip code)

Nature of Business _____

Contact Person _____ Telephone _____

Title _____ FAX _____

Tax Payer ID Number _____ E-mail _____

2. Project Information

Brief Project Title _____

Project Work Site Location _____

3. Market Sector (Select and check the most appropriate Buildings Sectors that apply)

☐ Residential

☐ Multi-Family

4. Program Costs and Requested Funding

Amount of PIER funding requested: \$ _____

Amount of match funding being supplied: \$ _____

Total Program Costs: \$ _____

5. Type of PIER funding being requested (Please check just one)

☐ PIER funds with royalty provisions

☐ PIER funds without royalty provisions

6. Business Type

Number of Employees _____ Year Established _____

How Long Under Current Ownership _____

Legal Form of Business: (check one)

☐ Sole Proprietorship

☐ Limited Partnership

☐ General Partnership

☐ Corporation

☐ Sub-Chapter S Corporation

☐ Limited Liability Company

☐ Other (identify) _____

If Corporation, attach Articles of Incorporation. If Partnership, attach Partnership Agreement. If Sole Proprietorship, attach Fictitious Name Filing immediately following Attachment A. If Limited Liability Company, attach Articles of Organization.

7. Small Business Preference Claim:

Are you certified as a small business by the State of California or have you applied for certification?

No ☐

Yes ☐ State Certification

☐ Already certified _____ (date)

☐ Application submitted to Office of Small Business Certification and Resources
_____ (date)

Are you self-certifying as a small business under the Federal guidelines?

No ☐

Yes ☐ Federal Self-Certification

Number of Employees: _____

Annual Receipts: \$ _____

Standard Industrial Classification (SIC) Code: _____

8. Management and Ownership Information

Bidders must provide the following management and ownership information

Management

Name	Title	Years w/Company
------	-------	-----------------

_____	_____	_____
-------	-------	-------

_____	_____	_____
-------	-------	-------

Ownership (list all corporate and partnership bidders)

Shareholder/Partner	% Ownership	SS#
<u>General or Limited</u>		

9. Corporate Status. Please answer the following questions. If you answer yes to any of the questions please provide a detail explanation.

YES

NO

- ☐ ☐ Has your business or you as a sole proprietor, ever filed bankruptcy or defaulted on any debts?
- ☐ ☐ Is your business or you as a sole proprietor, a party to any claim or lawsuit?

10. Disabled Veteran Business Participation Acknowledgement

I certify that I have read and understand the requirements of DVBE participation and understand my obligations in regard to DVBE. I also understand that failure to meet the requirements of the DVBE program in my Final Proposal will cause my Final Proposal to be rejected from evaluation and scoring.

YES

☐

NO

☐

11. Confidentiality Requests: Are you submitting a Volume 3?

YES

☐

NO

☐

12. Program Abstract (No More Than 250 Words):

I hereby authorize the California Energy Commission to make any inquiries and obtain any financial information necessary for the purposes of screening my NOI. In addition, I authorize the California Energy Commission to make any necessary inquiries to verify the information I have presented.

I hereby certify to the best of my knowledge that I have read and understand the terms and conditions contained in this RFP package and that the information contained in this submittal and supplemental information is correct and complete.

Signature of Authorized Representative

Date

Typed Name

Title

Attachment 2.2

RFP 400-00-401

PROGRAM TEAM LIST

Program Team Director:

Key Personnel:

DVBE:

Element Leads:

ATTACHMENT 4

SMALL BUSINESS AND DVBE CERTIFICATION

The OSBCR address and phone for Small Business Preference and DVBE information is:

Department Of General Services
Office of Small Business Certification and Resources
1531 I Street, 2nd Floor
Sacramento, CA 95814-2016
Phone No.: (916) 322-5060

Small Business Certification

In order to receive Small Business Preference, Bidder must either be certified by the State Department of General Services, Office of Small Business Certification and Resources (OSBCR) as a small business, or be self-certified pursuant to the Federal Government.

DVBE Certification

- o Each DVBE firm listed on Attachment 5.2 must be formally certified as a DVBE by OSBCR. The DVBE program is not a self-certification program. DVBE certification must be approved by OSBCR by the notice of award date of the contract to be counted in meeting participation goals.
- o A copy of the certification letter approved by, or a copy of the certification form submitted to OSBCR must be included in the proposal package.

To qualify as a DVBE, the DVBE must:

- 1) Be a California resident;
- 2) Own 51% of the firm and meet the requirements: in 3) and 4) below.
- 3) Provide to the OSBCR, by no later than 5:00 p.m. on the date on which the proposal is due, an Award of Entitlement from the United States Department of Veterans Affairs or the United States Department of Defense, issued within 6 months of the date on which certification is sought, which would certify or declare the existence of a service-connected disability, of at least 10 percent, at the time of application for or renewal of certification as a DVBE, and
- 4) Meet all requirements set forth in Article 6 (commencing with Section 999) of Chapter 6, Division 4 of the California Military code.

The Internet addresses are:

OSBCR Homepage: <http://www.dgs.ca.gov/osbcr>

This internet site provides general information about the DVBE program and certification process.

DVBE list: <http://www.dgs.ca.gov/osbcr/dvbe/dvbe.htm>

OSBCR maintains a list of certified DVBEs. The list is separated into three main subject areas: Commodities, Construction, and Services. Within each subject area, there are more specific areas of expertise. The Energy Commission does not have separate DVBE lists.

VOLUME 2, TECHNICAL SECTION

PROGRAM DESCRIPTION

PROGRAM IMPACTS

OVERALL PROGRAM GOALS

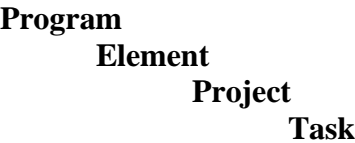
PROGRAM ELEMENTS

The _____ consists of one administrative element and technical elements

- Element 1. Program Administration
- Element 2. _____
- Element 3. _____

Each element contains multiple projects, and each project contains one or more tasks. Contract objectives, prior research, contractor activities and deliverables are described for each task.

The hierarchy of work to be conducted in this contract is as follows, with quantities listed in parentheses:



The following summary table diagrams how the _____ will address the PIER Buildings research issues and objectives

VOLUME 2, TECHNICAL SECTION cont'd

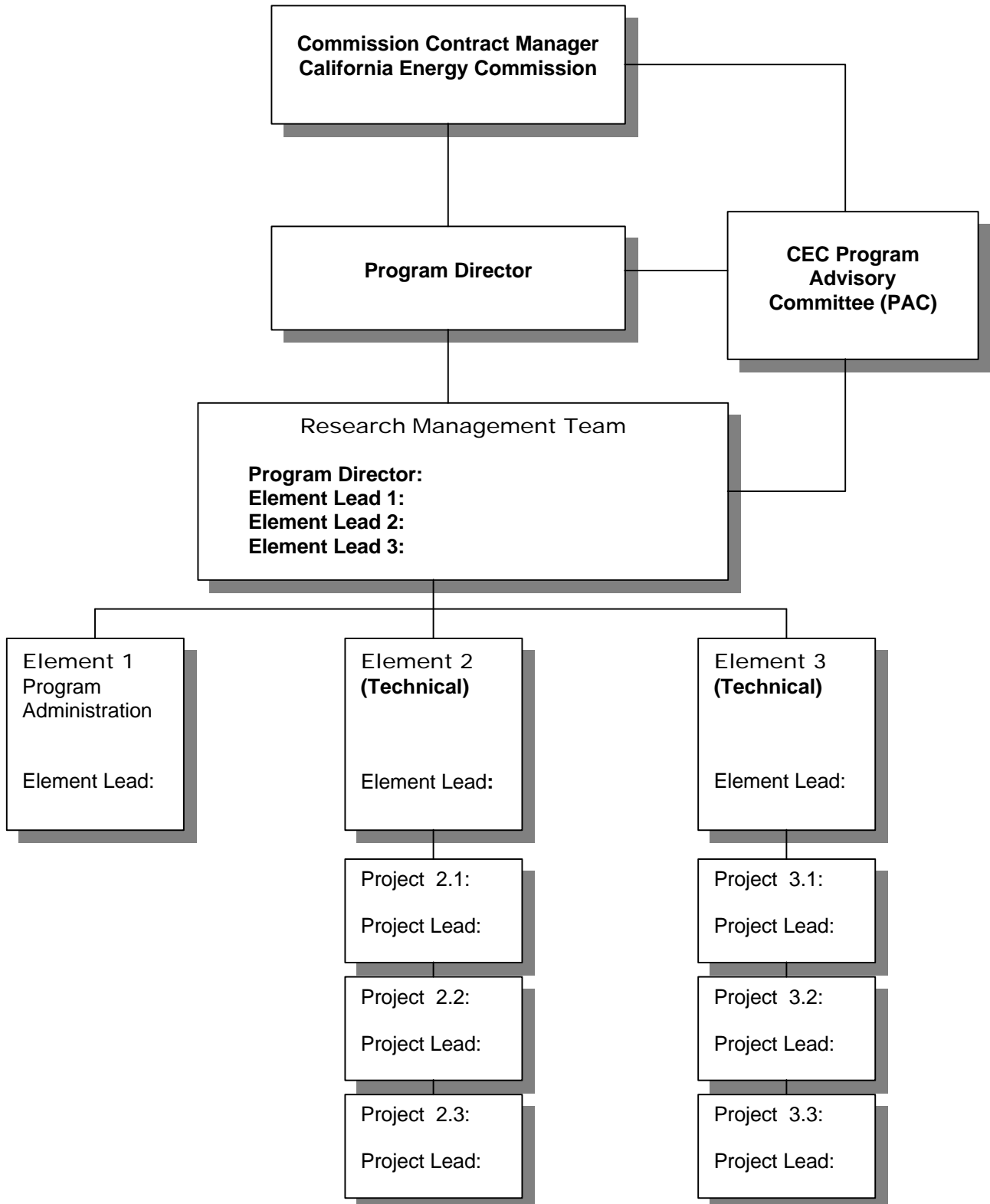
SUMMARY TABLE
Abbreviated Form of CEC Issues, Goals, and Objectives

CEC Issue	Technical Goal	Objective	Element
Rapid energy consumption growth inland	Characterize issue and identify highest value future opportunities	Future program plans	6
	Load reduction strategies	Reduce cooling energy use in new and existing buildings	2, 3, 4, 5
	Load management	Increase consumer load management choices	3, 4, 5
		Increase consumer options to shift load	3, 4, 5
		Energy-efficient design and construction strategies for distributed heating, cooling and generation.	4, 5
Non-energy benefits	Characterize issue and identify highest value future opportunities	Future program plans	6
	Quantitative metrics for non-energy benefits	Enable account for non-energy benefits	
	Technologies that are energy-efficient and provide non-energy benefits	Increase functionality and use of energy-efficient products by integrating with non-energy	2, 3, 4, 5
	Develop design methods	Increase functionality and use of energy-efficient products by integrating with non-energy	3, 5
Public health and safety	Characterize issue and identify highest value future opportunities	Future program plans	6
		Building features and construction practices for IAQ and moisture	
	Metrics, sensors, and controls for health, safety and energy	Enable mitigation of health and safety problems	
		Options for sensing and controlling moisture and IAQ	
Building and housing affordability & value and state's economy	Improve energy efficiency and enhance health and safety	Ventilation and construction techniques that mitigate moisture and IA problems.	2, 3, 4
	Characterize issue and identify highest value future opportunities	Future program plans	6
	Software tools	Design and compliance tools for energy standards	
		Simulation software for CA to improve HVAC performance and design	2, 3, 4, 5
		Simplified design tools for CA climates	
	Increase building value	New innovations	3, 5
		Highest value strategies and technologies for retrofit	6
		Strategies responsive to current construction practices (including metal framing)	
		Create downsized equipment for multi-family applications.	4
	Strategies and tools to verify performance and investment value	Tools for M&V (commissioning & diagnostic tools)	2
		Tools to verify installation of insulation, envelope sealing, and duct sealing	
	System approaches that maximize value	Integrated, multi functionality equipment and appliances	3
		Increase building functionality and decrease operating costs by design and construction for CA climates	4, 5
		Integration of energy-efficient strategies and products with other building elements	3, 4, 5

VOLUME 2, TECHNICAL SECTION, cont'd

Program Organization Chart

The _____ is organized as shown in the tables below:



ATTACHMENT 9

STANDARD CONTRACT TERMS AND CONDITIONS

3. CONTRACT CONTENTS

This contract consists of the paragraphs listed below and attached exhibits which are hereby expressly incorporated herein.

1. Contract Purpose
2. Contract Term
3. Contract Contents
4. Definitions
5. Payments to Contractor
6. Travel and Per Diem
7. Purchase of Equipment
8. Project Budget Revision
9. Contract Management
10. Standard of Performance
11. Subcontractors and Subcontractor Agreements
12. Reporting
13. Recordkeeping, Cost Accounting and Auditing
14. Business Activity Reporting
15. Review and Notice of Conflicting Terms
16. Confidentiality
17. Intellectual Property Items Developed Prior to this Contract
18. Rights of Parties Regarding Intellectual Property
19. Royalty Payments to Commission
20. Notices to Parties
21. Disputes
22. Stop Work
23. Termination
24. General Terms and Conditions

- Exhibit A Work Statement
Exhibit B: Task Deliverables, Schedule
Exhibit C: Budgets
Exhibit D: Contract Contacts – Commission and Contractor
Exhibit E: Confidential and Intellectual Property List
 Attachment 1 – Content and Progress Report Format
 Attachment 2 – Example of Monthly Progress Report
 Attachment 3 – Model Year-End and Final Report

4. DEFINITIONS

- A. ***Affiliate of the Contractor*** means any natural person, corporation, partnership, joint venture, sole proprietorship or other business entity directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Contractor. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or

otherwise. For purposes of this contract, it is presumed that ownership or control of the voting power of more than fifty percent (50%) of the voting stock or partnership interests in an entity constitutes control of that entity.

- B. **Contract Budget** refers to Commission reimbursable and Contractor's matching fund expenditures for that portion of the project covered by the contract.
- C. **Contract Period** is the length of this contract between the Energy Commission and the Contractor. The Contractor's "project" may coincide with or extend outside the "contract period."
- D. **Date** means calendar date.
- 1) **Contract Start Date** is the date Commission reimbursable expenses can begin after the Department of General Services signs the contract document.
 - 2) **Contract End Date** is the last date Commission reimbursable expenses can be incurred and is the expiration date of the contract.
- E. **Economic Benefit** for a project co-funded using Energy Commission funds means the realization of economic gain or other tangible benefits by the Contractor or its affiliates (except bona fide third party purchasers of Contractor's commercial products) through the use of project-related products and rights, including but not limited to, operation, sale, distribution or manufacturing, or by any other transaction, including but not limited to, grant, rent, loan, equity, option, transfer, license or other fee, or by otherwise disposing of the project-related products and rights.
- The Commission may rely upon professional accounting opinion in making a final determination of the dollar value of gross revenue, and such determination shall be the basis for calculating the royalty payment due the Commission.
- F. **Equipment** is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Commission funds. **Equipment** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the project.
- For purposes of determining depreciated value of equipment used in the contract, the project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Commission funds. The Commission may determine the normal useful life of such equipment.
- G. **Financial Statements** means balance sheets, statements of operations, statements of cash flows, and capital statements.
- H. **Gross Revenues** means the gross sales price, rentals and other amounts received by Contractor from or on account of the sale, lease, or other transfer or use of Project-Related Products and Rights, less sales tax paid. Gross Revenues shall be determined as above and in accordance with appropriate Federal cost principles and any economic benefit.

- I. **Match Fund Participant** means any party which supplies match funds to the project.
- J. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
- K. **Otherwise Disposing Of** means (1) project-related products and rights not sold but delivered by the Contractor or its affiliates to others regardless of the basis for compensation, if any, and (2) project-related products and rights put into use by the Contractor or any third party for any purpose other than testing or evaluation of the project-related products and rights.
- L. **Program** refers to the entire effort undertaken and planned by the Contractor including the work co-funded by the Commission. The project may coincide with or extend beyond the contract period.
- M. **Project** refers to the work elements of the program. Typically, there are distinct projects within the elements being paid for by the Commission under this contract.
- N. **Project-Related Products and Rights** means any and all energy inventions, discoveries, machines, designs, computer software, products, devices, mechanisms, methods, protocols, processes, algorithms, flowcharts, diagrams, trade secrets, data, copyrights, patents, trademarks, proprietary rights, and the like created or made or discovered or first reduced to practice by the Contractor or other third party as a result, in whole or in part, of the contract award(s) and any and all updates, revisions, modification, enhancements, derivations, variations, additions, continuations, renewals, and extensions thereto and all proceeds and products therefrom.
- O. **Sale** is sale, license, lease, gift or other transfer of a project-related product or right.
- P. **Sales Price** means gross revenue, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a sale.
- Q. **Subject Invention** means any and all energy invention or discovery conceived, or first actually reduced to practice in the course of or under the Commission-funded portion of this contract (i.e., that portion of this contract for which Contractor has invoiced the Commission and received reimbursement) and includes any art, method, process, machine, manufacture design or composition of matter, or any new and useful improvement hereof, whether patented or unpatented, under the patent laws of the United States of America or any foreign country.
- R. **Technology** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a technology area; direct steam generation is an innovation in this technology area. **Technology Developed** means subject invention and/or project-related products and rights.
- S. Terms Relating to Data
- 1) **Technical Data** or **Data** as used throughout this contract means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer

programs, computer software data bases, and computer software documentation). Examples of technical data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses and other information incidental to contract administration.

- 2) **Business Information** is information about the operation of a specific business. It includes information concerning the cost and pricing of goods, supply sources, cost analyses, characteristics of customers, books and records of the business, sales information including mailing lists, customer lists, business opportunities, information regarding the effectiveness and performance of personnel, and information incidental to contract administration.
- 3) **Public Information** is information previously published, generally available from more than one source, or information in the public domain. All air monitoring and emission data included in a proposal or requested through a contract are public information. California Government Code Section 6254.7 states that all information, analyses, plans or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any state or local agency requires Contractor to provide before the Contractor builds, erects, alters, replaces, operates, sells, rents, or uses such article, etc., are public records.
- 4) **Confidential Information** is technical data or business information Contractor has satisfactorily identified and which the Commission has agreed to designate as confidential.
- 5) **Proprietary Data** is such data as Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this contract or produced by Contractor or its subcontractors at its own expense, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this contract is commenced.
- 6) A **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
- 7) **Generated Data** is that data which Contractor collects, collates, records, deduces, reads out or postulates for use in the performance of this contract. In addition, any electronic data processing program, model or software system developed or substantially modified by Contractor in the performance of this contract at Commission expense, together with complete documentation thereof, shall be treated as generated data.
- 8) **Deliverable Data** is that data which, under the terms of this contract, is required to be delivered to the Commission.

5. PAYMENTS TO CONTRACTOR

Subject to the conditions listed below, the Commission agrees to reimburse Contractor for expenses incurred in accordance with the budget, Exhibit C. The consideration to be paid Contractor, as provided herein, shall be in compensation for Contractor's actual and allowable expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided. The Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that Contractor sends a hardcopy the same day to the address in Exhibit D, Contract Contacts. The total amount of this contract shall not exceed \$[Total cost (spellout)].

- A. A request for payment shall consist of, but is not limited to:
- 1) a dated invoice, as detailed in Exhibit C, Budget, listing the following items:
 - a) Contractor's federal ID number and the Commission contract number,
 - b) billing period,
 - c) Contractor labor showing employee labor rates, hours, direct costs, and indirect costs,
 - d) travel expenses, subcontractor invoices, DVBE invoices and equipment invoices with updated UCC.1
 - e) match fund expenditures,
 - f) cumulative expenditures by task during the performance of the contract, and
 - 2) written progress reports and deliverables that coincide with the billing period and are prepared by the Contractor as detailed in Exhibit A and Exhibit B.
- B. Each invoice is subject to Commission Contract Manager approval and payment by the State Controller's Office.
- C. Payments shall be made to Contractor only for undisputed invoices. An undisputed invoice is an invoice executed by Contractor for services rendered to the Commission and for which additional evidence is not required to make payment. Such evidence shall consist of written progress reports and any other deliverables due, prepared by Contractor, submitted to and approved by the Commission Contract Manager, as required by each task. The Commission Contract Manager shall give written notice and specify the known reasons for dispute to Contractor within 15 working days of receipt of the disputed invoice by using a State of California Standard Form 209. If the invoice is not disputed within the 15 working days, the invoice is presumed to be valid, but is subject to audit and verification.
- D. The Commission Contract Manager may approve invoices requesting partial payment of a task if the Contractor has demonstrated sufficient evidence of progress toward preparing the deliverables required in that task. The Commission Contract Manager will dispute an invoice requesting payment of all funds remaining in that task budget, if the Commission Contract Manager has not received and approved all of the deliverables due for that task.
- E. Commission shall retain from each invoice an amount equal to 10% of that invoice, excluding equipment invoices. The retained amount shall be held by the Commission and released annually to Contractor upon Commission approval that the contract work has been satisfactorily completed and the Annual Year-End Report has been received and approved. Contractor must submit an invoice for the retained amount.

OR

- F. Retention may be released upon completion of tasks that are considered separate and distinct, i.e., the task is a stand-alone piece of work that does not affect the other tasks. Certain tasks such as administration or management of the contract and/or subcontractors are not considered separate and distinct tasks. Therefore, retention on those tasks will not be released until the termination of the contract.

The Commission Contract Manager shall specify and notify the Contractor Program Director in writing which tasks can be paid in full upon their completion. The procedure for releasing retention upon task completion is as follows:

- 1) Contractor must submit all deliverables required by the task and an invoice requesting payment in full for the task.
- 2) The Commission Contract Manager must approve the submitted work. The work must be satisfactorily completed and deliverables accepted by the Commission Contract Manager.
- 3) The Commission Contract Manager must prepare and submit to the Contracts Office, with the Contractor's invoice requesting retention payment, a copy of all approved deliverables and a Contract/Contractor Evaluation Form.

- G. Payments shall be made no more frequently than monthly in arrears.

- H. Contractor shall submit all invoices to the address designated in Exhibit D.

- I. Payment shall be made to Contractor no later than 30 calendar days from the date a correct, undisputed invoice is received in the Commission Accounting Office. The State shall make payment to the Contractor for performance under this contract, in accordance with applicable deliverable criteria, receipt and approval by the Commission, and in accordance with invoices submitted.

- J. Contractor is entitled to interest penalties beginning on the 46th calendar day that an undisputed invoice is not paid. Contractor is not required to submit an invoice for the interest penalties.

- K. Contractor shall retain all records relating to direct and indirect expenses reimbursed to Contractor hereunder, and to hours of employment on this contract by all employees of Contractor for which the Commission is billed. Such records shall be maintained for a period of three years after final payment of this contract, or until audited by the State, whichever occurs first, and shall be available for inspection or audit at any reasonable time by the Commission or its designee.

- L. This contract is funded through the Public Interest Energy Research (PIER) Program. Contractor may be providing matching funds as identified in Contractor's proposal, contract Exhibit C, and Exhibit A. Match may be revised subject to the requirements of Exhibit A.

- M. Availability of these contract funds may expire on _____. Funding after this date is contingent upon an extension of the availability periods. The Commission may request the availability period to be extended through the State legislative process; however, the Commission cannot warrant or guarantee that such extension will be approved. The Commission has the option to cancel the contract under the termination clause or to amend the contract to reflect any reduction of funds.

6. TRAVEL AND PER DIEM

- A. Travel identified in Exhibit C, Budget, is approved and does not require further authorization.
- B. Travel that is not included in Exhibit C, Budget, shall require prior written authorization from the Commission Contract Manager. Commission will reimburse travel expenses from the Contractor's office location where the employees assigned to the contract are permanently located.
- C. Contractor shall be reimbursed for travel and per diem on the same basis as nonrepresented State employees, Commission shall provide Contractor with current rates and updates when revised by the State or requested by Contractor. Travel expenses in excess of the State rates cannot be reimbursed.
- D. Contractor must retain documentation of travel expenses in its financial records as follows:
 - expenses must be detailed using the current State rates,
 - expenses must be listed by trip including dates and times of departure and return, and
 - receipts for travel expenses claimed must be retained by Contractor (receipts are not required for travel meals or incidentals within current allowable rates).

7. PURCHASE OF EQUIPMENT

- A. Equipment identified in Exhibit C, Budget, is approved for purchase.
- B. In the event Commission contract funds are used to purchase equipment not identified in Exhibit C, Budget, then the purchase of equipment in excess of \$5,000 shall be subject to prior written approval from the Commission Contract Manager.
- C. All equipment purchased with Commission funds shall be made subject to the following terms and conditions:
 - 1) The Commission Contract Officer will complete a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Contractor for signature. The Commission Contract Officer will file the signed UCC.1 with the Secretary of State's Office. Invoices for equipment purchases will not be processed until the UCC.1 has been filed with the Secretary of State's Office.
 - 2) Title to all non-expendable equipment purchased in part or in whole with Commission funds shall remain with the Commission.
 - 3) Contractor shall assume all risk for maintenance, repair, destruction and damage to equipment while in the possession or subject to the control of Contractor. Contractor is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Work Statement.
- D. Upon termination of this contract, Commission may:
 - 1) By mutual agreement with the Contractor, allow the Contractor to purchase such equipment for an amount not to exceed the residual value of the equipment as of the date of termination of this contract.

- 2) For separate consideration, authorize the continued use of such equipment to further Public Interest Energy Research efforts.
- 3) Request that such equipment be returned to the Commission with any costs incurred for such return to be borne by Commission.

8. PROJECT BUDGET REVISIONS

- A Budget reallocations that do not significantly affect the scope of work will be made in the following manner. Contractor shall provide reasonable advance notification to the Commission Contract Manager of any anticipated budget reallocations. Contractor may reallocate an element, project or task budget up to 15 percent (15%), with prior written approval from the Contract Manager. Reallocations of more than fifteen percent (15%) of an element, project, or task budget require prior written approval of the Commission Contract Manager and the Buildings Program Team Lead. Commission Contract Manager will notify the Contractor Program Director in writing within 10 working days. The Commission Contract Manager shall send approved changes in a budget to the Commission Contract Officer.
- B Significant changes in the scope of work must be approved by the Commission in the form of a formal amendment. A change is significant if it increases the project budget beyond the approved amount, results in changes in deliverables, moves due dates beyond the term of the contract or modifies the scope of work reasonably beyond that approved at the Commission business meeting.

9. CONTRACT MANAGEMENT

A. Contractor Program Director

The Program Director on behalf of Contractor is designated in Exhibit D. Contractor's Program Director may not be replaced without Commission Contract Manager's prior written approval. Such approval shall not be unreasonably withheld. The Contractor Program Director is responsible for the day to day project status, decisions and communications with the Commission Contract Manager.

B. Commission Contract Manager

The Commission Contract Manager is designated in Exhibit D. Commission may change the Contract Manager by notice given Contractor at any time signed by the Commission Contract Officer. The Commission Contract Manager is responsible for the day-to-day contract status, decisions and communications with the Contractor Program Director. Commission Contract Manager will review and approve all project deliverables, reports and invoices.

- C. Within the contract term stated in Contract Paragraph 2, revisions to Exhibit B, Task Deliverables and Schedule, may be made by the Contractor Program Director and approved by the Commission Contract Manager.

10. STANDARD OF PERFORMANCE

- A. Contractor, its subcontractors and their employees in the performance of Contractor's work under this contract shall be responsible for exercising the degree of skill and care required by

customarily accepted good professional practices and procedures used in scientific and engineering research fields.

- B. The failure of a project to achieve the technical or economic goals stated in the Work Statement is not a basis for the Commission to determine that the work is unacceptable, unless the work conducted by the Contractor or subcontractors is deemed by the Commission to have failed the foregoing standard of performance.
- C. In the event that Contractor or its subcontractor fail to perform in accordance with the foregoing standard of performance, the Commission Contract Manager and the Contractor Program Director shall seek to negotiate in good faith an equitable resolution satisfactory to both parties. If such a resolution cannot be reached, the parties shall work through the Commission's dispute resolution process described in Paragraph 23, Disputes herein.
- D. Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.
- E. The Commission Contract Manager shall, upon completion of the contract and/or release of retention, prepare a performance evaluation of Contractor.
 - 1) If the Commission Contract Manager prepares an unsatisfactory evaluation, the evaluation shall be filed with the Department of General Services and sent to the Contractor within 15 days. The Contractor shall have 30 days to prepare a response to the evaluation of the contract performance. The Contractor shall send its response to the Department of General Services, Office of Legal Services and a copy to the Commission.
 - 2) The unsatisfactory evaluation and Contractor's response shall not be a public record and shall remain on file for a period of 36 months only.

11. SUBCONTRACTORS AND SUBCONTRACTOR AGREEMENTS

A. Agreements with Subcontractors

- 1) Contractor shall be responsible for establishing and maintaining contractual agreements with and reimbursement of each of the subcontractors for work performed in accordance with the terms of this contract. Contractor shall provide Commission with copies of all contractual agreements with subcontractors promptly upon final execution thereof.

Replacement or substitution of all non-key subcontractors is permitted with reasonable advance written notification to the Commission Contract Manager. Upon the termination of any subcontract, the Commission Contract Manager shall be notified immediately. The replacement or substitution process shall be subject to the provisions of subparagraphs D and E below.

- 2) PIER Contractors who are subcontracting with a private or public university may use language from the Commission's terms and conditions for universities and referenced in Request for Proposal 500-98-505, Attachment 7, amended on May 8, 1998, which addresses special terms applicable to universities.

- 3) Each subcontract shall contain provisions similar to those of Paragraph 20. "Rights of Parties Regarding Intellectual Property", subparagraph F. "Limitations on Contractor Disclosure of Contract Data, Information, Reports and Records," related to the confidentiality of Commission data and its nondisclosure by Contractor.
- 4) All subcontracts entered into pursuant to this contract shall be subject to examination and audit by the Bureau of State Audits for a period of three years after final payment under the contract.
- 5) Each subcontract to which the Commission has consented shall contain a provision that further assignments shall not be made to any third or subsequent tier subcontractor without additional advance written consent of Commission.

B. Key Personnel

Contractor's key personnel, listed in Exhibit D, may not be substituted without the Commission Contract Manager's prior written approval. Such approval shall not be unreasonably withheld. Contractor may substitute all other personnel, with reasonable advance notification made to the Commission Contract Manager.

Key personnel are employees or consultants of the Contractor who are critical to the outcome of the project. For example, they may have expertise in the particular field, or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project.

C. Key Subcontractors and DVBE Subcontractors

Contractor's key and DVBE subcontractors, listed in Exhibit D, may not be substituted without the Commission Contract Manager's prior written approval. Such approval shall not be unreasonably withheld. Contractor may substitute all other subcontractors, with reasonable advance notification made to the Commission Contract Manager. Replacement of key subcontractors is subject to the conditions of subparagraph D. Replacement of DVBE subcontractors is subject to the conditions of subparagraph D and E.

Key subcontractors are contractors/subcontractors/vendors to the Contractor and who are critical to the outcome of the project. For example, they may have expertise in the particular field, or have experience that is not available from another source. An employee of the Contractor's contractor/subcontractor/vendor may also qualify as a "key" participant.

D. Additions, Removal, or Substitutions of Subcontractors

Any subcontractor changes shall be subject to the following conditions:

- 1) Contractor shall provide the Commission with a copy of its contracting policies and procedures at the time of contract signing. Contractor may use its contracting policies and procedures if it meets the State's selection requirements. The Commission Contract Officer shall evaluate the Contractor's solicitation and selection process to determine if it is in substantial accord with the State's process. The Commission Contract Officer will retain this set of contracting policies and procedures until the final audit of project records.

- 2) If Contractor's process is acceptable, Contractor may use its process to solicit and select subcontractors. If, however, Contractor's process does not substantially meet the State's requirements, Contractor shall solicit a minimum of three bids or provide justification, in advance, to the Contract Officer, as to why a competitive process is not appropriate.
- 3) Thirty days prior to using new policies and procedures, the Contractor shall notify the Commission Contract Officer and provide a detailed, written description of the changes. The Commission Contract Officer will provide a written determination to the Contractor stating whether the revised changes are still in substantial accord with the State's process.

E. Disabled Veteran Business (DVBE) Changes

During the term of this contract, the Contractor must use the DVBE subcontractors/vendors identified in its proposal. Before the DVBE subcontractors/vendors listed in the contract are changed, the Contractor must request approval in writing, from the Commission Contract Manager. The written request is subject to approval by the Commission Contract Manager, Division Management, DVBE Advocate and Executive Director. In addition, the procedure for replacing any subcontractor/vendor is defined in subparagraph D above. The Contractor's written request to replace a DVBE must include:

- 1) A letter from the Contractor explaining the reason for the change; and
- 2) The identity of the DVBE subcontractor/vendor changed; or
- 3) If the change is not another DVBE, an explanation of the Contractor's efforts (good faith) to replace the DVBE with another DVBE.

The Contractor's request and the Commission's approval or disapproval shall not be an excuse for noncompliance with any other provision of law including, but not limited to, the subletting and subcontracting fair practices act or any other contract requirements related to substitution of subcontractors.

Contractor's failure to adhere to the DVBE participation goals in its proposal may be cause for contract termination and recovery of damages under the rights and remedies due the Commission under Paragraph 23, Termination.

12. REPORTING

- A. All reports and deliverables shall be delivered to the person and address designated in Exhibit D.
- B. Progress Reports

The Contractor shall prepare progress reports which summarize all contract activities conducted by the Contractor for the reporting period, including an assessment of the ability to complete the project within the current budget and any anticipated cost overruns. Each progress report is due to the Commission Contract Manager within 30 days after the end of the reporting period. The Commission Contract Manager will specify the report format, contents, and number of copies to be submitted, see Attachment 1, Progress Report Format.

C. Final Report and Final Meeting

At the conclusion of the contract's technical work and as provided for in Exhibit A, Work Statement, and Exhibit B, Task Deliverables Schedule, Contractor shall prepare a comprehensive written Final Report, including an Executive Summary. The Commission Contract Manager will review and approve the Final Report.

Contractor shall also meet with the Commission to present the findings, conclusions, and recommendations. Both the final meeting and the Final Report must be consummated on or before the termination date of the contract. Final Report specifications and meeting are detailed in the Exhibit A, Work Statement and Attachment 2 Final Report Format.

D. All reports, including reprints, shall include the following legend:

LEGAL NOTICE

THIS REPORT WAS PREPARED AS A RESULT OF WORK SPONSORED BY THE CALIFORNIA ENERGY COMMISSION (COMMISSION). IT DOES NOT NECESSARILY REPRESENT THE VIEWS OF THE COMMISSION, ITS EMPLOYEES, OR THE STATE OF CALIFORNIA. THE COMMISSION, THE STATE OF CALIFORNIA, ITS EMPLOYEES, CONTRACTORS, AND SUBCONTRACTORS MAKE NO WARRANTY, EXPRESS OR IMPLIED, AND ASSUME NO LEGAL LIABILITY FOR THE INFORMATION IN THIS REPORT; NOR DOES ANY PARTY REPRESENT THAT THE USE OF THIS INFORMATION WILL NOT INFRINGE UPON PRIVATELY OWNED RIGHTS. THIS REPORT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION IN THIS REPORT.

13. RECORDKEEPING, COST ACCOUNTING AND AUDITING

A. Cost Accounting

Contractor agrees to keep separate, complete, and correct accounting of the costs involved in developing, installing, constructing, and testing of project-related product(s) funded under the Commission-funded portion of this contract as well as keep separate, complete, and correct account of the economic benefit(s) from project-related product(s) and right(s). The Commission shall have the right to examine Contractor's books of accounts at all reasonable times to the extent and as is necessary to verify the accuracy of Contractor's reports.

B. Accounting Procedures

The Contractor's costs shall be determined on the basis of the Contractor's accounting system procedures and practices employed as of the effective date of this contract. The Contractor's cost accounting practices used in accumulating and reporting costs during the performance of this contract shall be consistent with the practices used in estimating costs for any proposal to which this contract relates; provided that such practices are consistent with the other terms of this contract and provided, further, that such costs may be accumulated and reported in greater detail during performance of this contract. The Contractor's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this contract.

C. Allowability of Costs

1) Allowable Costs

The costs for which the Contractor shall be reimbursed under this contract include all costs, direct and indirect, incurred in the performance of work that are identified in the Contractor's proposal and contract Exhibit C, Element Budget. Costs must be incurred within the term of the contract. Factors to be considered in determining whether an individual item of cost is allowable include (i) reasonableness of the item, (ii) allocability of the item to the work, (iii) the Contractor's use of applicable Federal OMB Circulars A-87, A-21, A-122 or FAR Part 31, and (iv) the other terms and conditions of this contract. The Federal Guidelines are available from the Commission Contract Office and on-line at: www.whitehouse.gov/omb/.

2) Unallowable Costs

The following is a description of some specific items of cost that are unallowable; provided, however, that the fact that a particular item of cost is not included shall not mean that it is allowable. Details concerning the allowability of costs are available from the Commission Accounting Office.

- a) Contingency Costs, Imputed Costs, Fines and Penalties, Losses on Contracts, and Excess Profit Taxes are unallowable.
- b) The State of California is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor, or on any taxes levied on employee wages. The Commission will only pay for any State or local sales or use taxes on the services rendered for equipment, parts or software supplied to the Commission pursuant to this contract. The Contractor will execute all such documents and take all such steps as are reasonably necessary to obtain the benefits of tax exemptions for which Commission is eligible. Taxes paid, for which exemptions were available but not exercised, are not allowable items of cost.

- 3) Except as provided for in this contract, Contractor shall use the Federal OMB Circulars A-87, A-21, A-122 or FAR Part 31 in determining allowable and unallowable costs.

D. Audit Rights

Contractor shall maintain books, records, documents, and other evidence based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this contract. The Commission, an agency of the State or, at the Commission's option, a public accounting firm designated by Commission, may audit such accounting records at all reasonable times with prior notice by Commission. Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by Commission of the Contractor's final invoice. However, performance of any such interim audits by Commission does not preclude further audit.

Contractor agrees that the Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896)

E. Refund to Commission

If Commission determines, pursuant to subarticle C or otherwise, that any invoiced and paid amounts exceed the actual allowable incurred costs and earned fixed fee (if any), Contractor shall repay such amounts to Commission within thirty (30) days of request or as otherwise agreed by the Commission and Contractor. If Commission does not receive such repayments, Commission shall be entitled to withhold further payments to the Contractor.

F. Audit Cost

The cost of the audit shall be borne by the Commission provided that if the results of the audit reveal an error detrimental to Commission exceeding more than ten percent (10%) or \$5,000 (whichever is greater) of the amount audited or, if a royalty audit, the total royalties due in the period audited, Contractor agrees to reimburse Commission for reasonable costs and expenses incurred by Commission in conducting such audit.

14. BUSINESS ACTIVITY REPORTING

A. Contractor shall promptly notify the Commission Contract Manager of the occurrence of each of the following:

- 1) A change of address.
- 2) A change in the business name or ownership
- 3) The existence of any litigation or other legal proceeding affecting the project.
- 4) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
- 5) Contractor's receipt of notice of any claim or potential claim against Contractor for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.

B. Contractor shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the contract to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original Contractor, the Commission may terminate this contract as provided in the termination paragraph. (See also Paragraph 24)

15. REVIEW AND NOTICE OF CONFLICTING TERMS

Contractor warrants and attests that it has conducted a detailed review of the terms and conditions of its existing project related third party agreements and has identified all known or reasonably foreseeable conflicts with this contract's terms and conditions and has disclosed the conflicts in writing to the Commission prior to executing this contract. In the event further conflicts are identified, Contractor and Commission agree that these conflicts shall be addressed using the procedure described in the "Disputes" clause found at Paragraph 21. Nothing in this contract is intended to nullify or obviate any prior third party agreements executed by Contractor. However, the Commission is free to terminate this agreement if the conflict impairs or diminishes the value of this agreement.

16. **CONFIDENTIALITY**

A. The Commission Contract Manager and the Contractor will identify pre-existing confidential or proprietary items to be delivered under this contract.

Or

A. The Contractor has not identified any confidential or proprietary items to be delivered under this contract.

Or

A. The Commission agrees to keep confidential the items listed in Exhibit E.

AND

The Commission Executive Director makes the final determination of confidentiality. In the event there is a disagreement over the items to be delivered under the contract, the parties shall use the "Disputes" clause found at Section 21. Those items to be delivered as confidential shall be subject to the Commission Executive Director's determination of confidentiality. If the Contractor wishes to appeal the Executive Director's determination, the appeal shall be made to the full Commission. If the Contractor disagrees with this determination, the Contractor may seek judicial review as per Title 20 CCR 2506, et seq.

B. Public and Confidential Deliverables

All deliverables including, but not limited to, progress reports, task deliverables and the Final Report shall not contain confidential information except when the Commission Contract Manager and the Contractor deem it necessary to include confidential information in a deliverable. In such event, the Contractor shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records. Only those items specifically listed in Exhibit E or in a subsequent determination of confidentiality qualify as confidential deliverables.

C. Identifying and Submitting Confidential Information

All confidential information submitted by the Contractor shall be marked "Confidential" on each document containing the confidential information and delivered in a sealed package to the Commission Contract Officer.

D. Future Confidential Information

The Contractor and the Commission agree that during this contract, it is possible that the Contractor may develop additional data or information that the Contractor considers being protectable as confidential information. The Commission Contract Manager shall provide a copy of the Commission Application for Confidential Designation to the Contractor Program Director. Contractor must list all items and information along with justification for confidentiality and submit the application to the Commission Contract Manager. The

Commission Executive Director makes the final determination of confidentiality. Such subsequent determinations will be added to Exhibit E.

17. INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS CONTRACT

- A. The Commission makes no claim to intellectual property that existed prior to this contract and was developed without Commission funding.
- B. The Contractor gives notice that the items listed in Exhibit E have been developed without Commission funding and prior to the start of this contract. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this contract, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties make an informed decision regarding intellectual property rights and possible repayment obligations.

OR

- B. Contractor has not identified any pre-existing intellectual property.

18. RIGHTS OF PARTIES REGARDING INTELLECTUAL PROPERTY

- A. Commission's Rights in Deliverables

Deliverables and reports specified for delivery to the Commission under this contract shall become the property of the Commission. The Commission may use, publish, and reproduce the deliverables and reports subject to the provisions of subparagraph C.

- B. Rights in Technical, Generated, and Deliverable Data

- 1) Contractor's Rights

All data (i.e., technical, generated and deliverable data) produced under this contract shall be the property of the Contractor, limited by the license retained by the Commission in 2) below, and the rights the Commission has in deliverables specified above in A).

- 2) Commission's Rights

Contractor shall provide the Commission with a copy of all technical, generated and deliverable data produced under the contract. Contractor does not have to copy and submit data the Commission Contract Manager has identified as being unusable to the Commission and the PIER program. For instance, some data may not warrant routine copying and shipping because the raw data is too disaggregated or voluminous for practical application. Retention of such data at the Contractor's facility for inspection, review and possible copying by the Contract Manager is expected to be a more efficient use of Commission staff and the Contractor's time and efforts.

For all data (technical, generated and deliverable) produced under this contract, the Commission retains a no-cost, non-exclusive, non-transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, produce and to authorize others to produce, translate, publish and use the data, subject to the provisions of subparagraph C.

C. Limitations on Commission Disclosure of Contractor's Confidential Records

- 1) Data provided to the Commission by Contractor, which data the Commission has not already agreed to keep confidential and which Contractor seeks to have designated as confidential, or is the subject of a pending application for confidential designation, shall not be disclosed by the Commission except as provided in Title 20 CCR Sections 2506 and 2507 (or as they may be amended), unless disclosure is ordered by a court of competent jurisdiction.
- 2) It is the Commission's intent to use and release project results such as deliverables and data in a manner calculated to further PIER while protecting proprietary or patentable interests of the parties. Therefore, the Commission agrees not to disclose confidential data or the contents of reports containing data considered by Contractor as confidential, without first providing a copy of the disclosure document for review and comment by Contractor. Contractor shall have no less than 10 working days for review and comment and, if appropriate, to make an application for confidential designation on some or all of the data. The Commission shall consider the comments of Contractor and use professional judgment in revising the report, information or data accordingly.

D. Exclusive Remedy

In the event the Commission intends to publish or has disclosed data the Contractor considers confidential, the Contractor's exclusive remedy is a civil court action for injunctive relief. Such court action shall be filed in Sacramento County, Sacramento, California.

E. Waiver of Consequential Damages

IN NO EVENT WILL THE ENERGY COMMISSION BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY FOR THE DISCLOSURE OF CONTRACTOR'S CONFIDENTIAL RECORDS, EVEN IF THE ENERGY COMMISSION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAMAGES THAT THE ENERGY COMMISSION WILL NOT BE RESPONSIBLE FOR INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFIT; LOSS OF SAVINGS OR REVENUE; LOSS OF GOODWILL; LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES; DOWNTIME; THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS; AND INJURY TO PROPERTY.

F. Limitations on Contractor Disclosure of Contract Data, Information, Reports and Records

- 1) Contractor will not disclose the contents of the final or any preliminary deliverable or report without first providing a copy of the disclosure document for review and comment to the Commission Contract Manager. The Contractor shall consider the comments of the Commission Contract Manager and use professional judgment in revising the reports, information or data accordingly.
- 2) After any document submitted has become a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize the same, but shall include the legal notice stated in Paragraph 12.D.

- 3) Notwithstanding the foregoing, in the event any public statement is made by the Commission as to the role of Contractor or the content of any preliminary or Final Report of Contractor hereunder, Contractor may, if it believes such statement to be incorrect, state publicly what it believes is correct.
- 4) No record that is provided by the Commission to Contractor for Contractor's use in executing this contract and which has been designated as confidential, or is the subject of a pending Application for Confidential Designation, except as provided in Title 20, CCR Sections 2506 and 2507, shall be disclosed, unless disclosure is ordered by a court of competent jurisdiction (Title 20 CCR Section 2501, et seq.). At the election of the Commission Contract Manager, the Contractor, its employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager.
- 5) Contractor acknowledges that each of its officers, employees, and subcontractors who are involved in the performance of this contract will be informed about the restrictions contained herein and to abide by the above terms.

G. Proprietary Data

Proprietary data owned by the Contractor shall remain with the Contractor throughout the term of this contract and thereafter. The extent of Commission access to the same and the testimony available regarding the same shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable hereunder.

H. Preservation of Data

Any data which is reserved to the Contractor by the express terms hereof, and pre-existing proprietary or confidential data which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, shall be preserved by the Contractor at the Contractor's own expense for a period of not less than three years after receipt and approval by the Commission of the Final Report herein.

I. Destruction of Data

Before the expiration of three years and before changing the form of or destroying any such data, the Contractor shall notify Commission of any such contemplated action and Commission may, within thirty (30) days after said notification, determine whether it desires said data to be further preserved. If Commission so elects, the expenses of further preserving said data shall be paid for by the Commission. Contractor agrees that Commission may, at its own expense, have reasonable access to said data throughout the time during which said data is preserved. Contractor agrees to use its best efforts to identify competent witnesses to testify in any court of law regarding said data or, at Commission's expense, to furnish such competent witnesses.

J. Patent Rights

Patent rights for subject inventions will be the property of Contractor, subject to the Commission retaining a no-cost, nonexclusive, nontransferable, irrevocable royalty-free, worldwide perpetual license to use or have practiced for or on behalf of the State of California

the subject invention(s) for governmental purposes. Contractor must obtain agreements to effectuate this clause with all persons or entities, except for the U.S. Department of Energy (DOE), obtaining ownership interest in the patented subject invention(s). Previously documented (whether patented or unpatented under the patent laws of the United States of America or any foreign country) inventions are exempt from this provision.

K. March-In Rights

The Contractor shall forfeit and assign to the Commission, at the Commission's request, all rights on a subject invention if either: 1) Contractor fails to apply for a patent on subject inventions(s) developed under this contract within six months of conceiving or first actually reducing to practice the technology or 2) Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention. In this event, the Contractor agrees to relinquish all rights, subject to DOE reserved rights, on the subject invention to the Commission. The Commission will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the technology into the market place, including but not limited to, seeking patent protection, or licensing the invention.

L. Commission's Rights to Invention.

Contractor and all persons and/or entities obtaining an ownership interest in subject invention(s) shall include within the specification of any United States patent application, and any patent issuing thereon covering a subject invention, the following statement:

"THIS INVENTION WAS MADE WITH STATE OF CALIFORNIA SUPPORT UNDER CALIFORNIA ENERGY COMMISSION CONTRACT NUMBER KTNUMBER. THE ENERGY COMMISSION HAS CERTAIN RIGHTS TO THIS INVENTION."

M. Commission's Interest in Inventions.

Upon the perfecting of a patent application on any subject invention, Contractor will complete and sign a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Commission Contract Manager for complete processing. The Commission Contract Manager will review the UCC.1 for complete information and file the satisfactory UCC.1 with the Secretary of State's Office.

N. Copyrights

- 1) Copyrightable material first produced under this contract shall be owned by the Contractor, limited by the license granted to the Commission in 2) below.
- 2) Contractor agrees to grant the Commission a royalty-free, no-cost nonexclusive, irrevocable, nontransferable worldwide, perpetual license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this contract.

- 3) Contractor will apply copyright notices to all deliverables using the following form or such other form as may be reasonably specified by Commission.

“ [YEAR OF FIRST PUBLICATION OF DELIVERABLE], [THE COPYRIGHT HOLDER’S NAME]. ALL RIGHTS RESERVED.”

- 4) Software

In the event software is developed that is not a deliverable under the contract, Contractor shall have the right to copyright and/or patent such software and grants the Commission a royalty-free, no-cost, non-exclusive, irrevocable, non-transferable, worldwide, perpetual license to produce and use the software, its derivatives and upgrades for governmental purposes.

O. Intellectual Property Indemnity

Contractor warrants that Contractor will not, in its supplying of the work under this contract’s work statement, knowingly infringe or misappropriate any intellectual property right of a third party, and that it will conduct a reasonable investigation of the intellectual property rights of third parties to avoid such infringement. Contractor will defend and indemnify Commission from and against any claim, lawsuit or other proceeding, loss, cost, liability or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a deliverable infringes any patent, copyright, trade secret or other intellectual property right of any third party, or (ii) any third party claim arising out of the negligent or other tortious act(s) or omission(s) by the Contractor, its employees, subcontractors or agents, in connection with or related to the deliverables or the Contractor’s performance thereof under this contract.

19. ROYALTY PAYMENTS TO COMMISSION

- A. In consideration of Commission providing funding to Contractor, Contractor agrees to pay Commission royalties on the terms and conditions hereinafter set forth.

Contractor agrees to pay Commission a royalty of 1.5% (one and one-half percent) of the Sale Price on the sale of each and every project-related product or right.

- B. Contractor’s obligation to make payments to Commission shall commence from the date project related products or rights are first sold and shall extend for a period of fifteen years thereafter. Payments are payable in annual installments and are due the first day of March in the calendar year immediately following the year during which Contractor receives gross revenues.
- C. Early Buyout. Contractor has the option of paying its royalty obligations to Commission without a pre-payment penalty, provided Contractor makes the payment within two years from the date at which royalties are first due to Commission, in the lump sum amount equal to two (2) times the amount of funds drawn down on the contract.
- D. Contractor agrees not to make any sale, license, lease, gift or other transfer of any Project-Related Products and Rights with the intent of, or for the purpose of, depriving Commission of royalties hereunder. Generally, this means that Contractor will not make any sale, license, lease or other transfer of Project-Related Products and Rights for consideration other than fair market value. Further, Contractor agrees that such activity constitutes breach of this contract and that

Contractor agrees to repay within 60 days the amount due under subparagraph C above (Early Buyout).

- E. Contractor acknowledges that a late payment of royalties owed to the Commission will cause the Commission to incur costs not contemplated by the parties. If a royalty payment is not paid when due, Contractor agrees to pay the Commission a late fee equal to two percent (2%) of the payment due. Additionally, Contractor agrees that royalty payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of Contractor to the Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- F. Contractor shall maintain separate accounts within its financial and other records for purposes of tracking components of sales and royalties due to Commission under this contract.
- G. Payments to Commission are subject to audit as provided for under Paragraph 15. "Recordkeeping, Cost Accounting and Auditing".
- H. In the event of default hereunder, Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. The occurrence of any of the following events or conditions shall cause default under this contract:
 - 1) Contractor's failure to pay when due, any amount due and payable under the terms of this contract.

20. NOTICES TO PARTIES

Notice to either party may be given by certified mail properly addressed, postage fully prepaid, to the address designated in Exhibit D for each respective party or to such other address as either party shall notify the other in accordance with this section. Such notice shall be effective when received, as indicated by post office records, or if deemed undeliverable by post office, such notice shall be effective nevertheless fifteen (15) days after mailing.

Alternatively, notice may be given by personal delivery to the party at the address designated in Exhibit D. Such notice shall be deemed effective when delivered unless a legal holiday for State offices commences during said 24-hour period, in which case the effective time of the notice shall be postponed 24 hours for each such intervening day.

21. DISPUTES

In the event of a contract dispute or grievance between the Contractor Program Director and Commission Contract Manager, the parties shall use any or all of the following procedures:

A. Commission Dispute Resolution

The Committee shall make a determination on the problem within ten (10) working days after receipt of the package. If the Commission Contract Manager and the Contractor Program Director cannot resolve a contract dispute or grievance, Contractor Program Director and Commission Contract Manager shall each prepare a package in writing stating the issues in dispute, the legal authority or other basis for their respective positions and the remedy sought. The packages must be submitted to the Commission Dispute Resolution Committee. The Commission Contract Manager will notify the Contractor Program Director of the current

Committee members. The Committee shall make a determination on the problem within ten (10) working days after receipt of the package.

Should Contractor disagree with the Committee's decision, Contractor may appeal to the full Commission at a regularly scheduled business meeting. The Committee will provide the Contractor with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

Contractor shall continue with its responsibilities under this contract during any dispute.

B. Binding Arbitration

Should the Commission's Dispute Resolution procedure identified in Paragraph A. above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the parties must mutually agree to have the dispute or grievance resolved through binding arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. One (1) arbitrator who is an expert in the particular field of the dispute or grievance shall resolve the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. The decision rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

22. STOP WORK

The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the contract's work tasks. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

A. Compliance

Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

B. Equitable Adjustment

An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.

C. Revoking a Stop Work Order

Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

23. TERMINATION

A. Breach

The Commission shall provide the Contractor written notice of intent to terminate due to Contractor breach. Contractor will have 15 calendar days to fully perform or cure the breach. In the event Contractor does not cure the breach within 15 days, the Commission may, without prejudice to any of its other remedies, terminate this contract upon five (5) calendar days written notice to Contractor. In such event, Commission shall pay Contractor only the reasonable value of the satisfactorily performed services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable.

B. For Cause

The Commission may, for cause, and at its option, terminate this contract upon giving thirty calendar (30) days advance written notice to Contractor. In such event, Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations. Commission will pay Contractor for services rendered and expenses incurred within the terms of the work statement and which were satisfactorily performed prior to such notice of termination which could not by reasonable efforts of Contractor have been avoided, but not in excess of contract maximum payable. Contractor agrees to relinquish possession of equipment purchased for this project with Commission funds to Commission, or Contractor may, with approval of Commission, purchase said equipment as provided by the terms of this contract.

The term "for cause" includes, but is not limited to, the following reasons:

- Partial or complete loss of match funds;
- Significant change in State or Energy Commission policy such that the work or product being funded would not be supported by the Commission;
- Reorganization to a business entity unsatisfactory to the Commission;
- The retention or hiring of subcontractors, or the replacement or addition of Key Personnel that fail to perform to the standards and requirements of this contract; or
- Failure to utilize the DVBE subcontractors/vendors in Contractor's proposal.

C. Bankruptcy

In the event proceedings in bankruptcy are commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed and qualifies, then Commission may terminate this contract and all further rights and obligations hereunder, by giving five (5) calendar days notice

in writing in the manner specified herein. It is recognized by the parties that the Commission shall have lien rights on equipment purchased with Commission funds for this project and the Commission shall retain lien rights until Contractor either returns said equipment to Commission or purchases it as is provided by the terms of this contract.

D. Gratuities

The Commission may, by written notice to Contractor, terminate the right of Contractor to proceed under this contract if it is found, after notice and hearing by Commission or by Executive Director of the Energy Commission or his duly authorized representative, that gratuities were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the Commission, with a view toward securing a contract or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of such contract.

In the event this contract is terminated as provided herein, Commission shall be entitled to (1) pursue the same remedies against Contractor as it could pursue in the event of the breach of the contract by Contractor, and (2) exemplary damages in an amount which shall be not less than three nor more than ten times the cost incurred by Contractor in providing any such gratuities to any such officer or employee, as a penalty, in addition to any other damages to which it may be entitled by law.

The rights and remedies of Commission provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

E. Advantage

Contractor, team member or subcontractors shall not hire, contract with, or otherwise commit themselves to an advantageous economic contract with the Commission's Contractor/subcontractor who evaluated Contractor's proposal. The Commission reserves the right to cancel the contract.

24. GENERAL TERMS & CONDITIONS

- A. It is understood and agreed that certain contract provisions shall survive the completion or termination date of this contract for any reason. The contract provisions include, but are not limited to:

"Payments to Contractor"	Section 5
"Purchase of Equipment"	Section 7
"Recordkeeping, Cost Accounting and Auditing"	Section 13
"Business Activity Reporting"	Section 14
"Rights of Parties Regarding Intellectual Property"	Section 18
"Royalty Payments to Commission"	Section 19
"Disputes"	Section 21
"Termination"	Section 23
"Site Access"	Section 24. D
"Indemnification"	Section 24. L

- B. The clause headings appearing in this contract have been inserted for the purpose of convenience and ready reference. They do not purport, and shall not be deemed, to define, limit, or extend the scope or intent of the clauses to which they appertain.
- C. If public hearings on the subject matter dealt with in this contract are held during the period of the contract, and if requested by the Commission, Contractor will make available to testify the personnel assigned to this contract. Commission will reimburse Contractor for labor and travel of said personnel at the contract rates for such work.
- D. The Energy Commission staff or its representatives shall have reasonable access to the construction site or R&D laboratory, and all project records.
- E. This contract shall be conducted in accordance with the terms and conditions of California Energy Resources Conservation and Development Commission (hereafter "Commission") Request for Proposal number 400-00-401, Contractor's proposal, dated proposal date, this contract, and the attached exhibits. Contractor's proposal is not attached hereto, but is expressly incorporated by reference into this contract. In the event of conflict or inconsistency between the terms of this contract and Contractor's proposal, this contract and its exhibits shall be considered controlling.
- F. In the interpretation of this contract, any inconsistencies between the terms hereof and the exhibits shall be resolved in favor of the terms hereof.
- G. Time is of the essence in this contract.
- H. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Other than as specified herein, no document or communication passing between the parties hereto shall be deemed as part of this contract.
- I. It is hereby understood and agreed that this contract shall be governed by the laws of the State of California as to interpretation and performance.
- J. The Commission reserves the right to seek further written assurances from the Contractor and its team that the work of the project under the contract will be performed consistent with the terms of the contract.
- K. This contract is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written contract amendment. Such consent shall not be unreasonably withheld.
- L. Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this contract.

Contractor warrants, represents and agrees that it and its subcontractors, employees and representatives shall at all times comply with all applicable State contracting laws, codes, rules and regulations in the performance of this contract.

- M. Contractor, and the agents and employees of Contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.
- N. No waiver of any breach of this contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of Commission to enforce at any time any of the provisions of this contract, or to require at any time performance by Contractor of any of the provisions therefor, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof or the right of Commission to thereafter enforce each and every such provision.
- O. If any provision of this contract or the application thereof is held invalid, that invalidity shall not affect other provisions of the contract.
- P. In no event shall any course of dealing, custom or trade usage modify, alter, or supplement any of the terms or provisions contained herein.
- Q. The Contractor under the performance of this contract has been fully informed of its duties, obligations, and rights under Public Contract Code, Sections 10355 through 10382, and any additional Contractor's rights and obligations that should be included. A copy of the applicable sections of the Public Contract Code shall be provided to the Contractor upon request.
- R. During the performance of this contract, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in the California Code of Regulations, Title 2, Division 4, Chapter 5 are incorporated into this contract by reference and made a part of it as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- S. Contractor shall give priority consideration in filling vacancies in positions funded by the Contract, and during the term of the Contract to qualified recipients of aid under Chapter 2, commencing with Section 11200 of the Welfare and Institutions Code, in accordance with Article 3.9, commencing with Section 11349, of the Welfare and Institutions Code.
- T. 1). The Government Code Chapter on Antitrust claims contains the following definitions:
- a) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to the Business and Professions Code, Section 16750, subdivision (c).
 - b) "Public Purchasing Body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550 (b).

- 2) In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under the Clayton Act (15 U.S.C. Sec. 15) Section 4 or under the Cartwright Act (Chapter 2 commencing with Section 16700) of the Business and Professions Code, Division 7, Part 2), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - 3) If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
 - 4) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. Government Code Section 4554.
- U.
- 1) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in the Family Code, Division 9; Part 5, Chapter 8, commencing with section 5200, and
 - 2) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- V.
- The Contractor warrants and represents that the goods or services sold, leased, or licensed to the State of California, its agencies, or its political subdivisions, pursuant to this contract are "Year 2000 compliant." For purposes of this contract, a good or services is Year 2000 compliant if it will continue to fully function before, at, and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate, and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the Contractor.
- W.
- The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

ATTACHMENT 9 cont'd

EXHIBIT A WORK STATEMENT

ELEMENT 1 - PROGRAM ADMINISTRATION

PROBLEM STATEMENT

The Program Administration element encompasses overall coordination and integration of the technical program elements for the _____ many organizations participating in this program, it is imperative that a process be in place to effectively manage the proposed program to achieve the program and project goals within allocated budget and schedule.

ADMINISTRATIVE GOALS

The Program Director has overall responsibility for managing the program to achieve the specified technical and economic performance goals and to ensure that research results meet guidelines for quality within budget and schedule. This will require coordinating R&D efforts between the technical program elements. The coordination shall include overseeing assessment studies, tracking R&D progress and deliverables, ensuring the quality of RD&D results, identifying and facilitating program linkages between elements, implementing mechanisms to revisit the program's research direction and focus as research results are achieved, ensuring connection with the market and linkage to utility deployment programs, and establishing systems for reliable internal and external communications throughout the contract period.

PROJECT LIST

This program element's work scope involves the following administrative projects:

- | | |
|-------------|-----------------------------|
| Project 1.1 | Kick-Off Meeting |
| Project 1.2 | Program Start-up Activities |
| Project 1.3 | Program Meetings |
| Project 1.4 | Annual Technical Briefings |
| Project 1.5 | Progress Reports |
| Project 1.6 | Final Report |
| Project 1.7 | Final Meeting |

This work statement includes objectives, contractor activities, task deliverables, key personnel and key subcontractors for each of the projects listed above. The deliverables are defined to the extent possible, but are subject to change based on recommendations from the Project Director and the approval of the Commission Contract Manager.

PROJECT 1.1 PROGRAM KICK-OFF MEETING

The objectives of this project are to review the Commission's expectations for this contract work, to coordinate activities between multiple PIER Building contracts, and to establish an initial schedule for future contract meetings.

The Contractor shall attend a kick-off meeting with the Commission Contract Manager to review the Commission's expectations for: accomplishing tasks described in the work statement; administrative requirements in the terms and conditions of the contract (e.g., invoicing, UCC.1 form filing, prior

approvals, data disclosure limitations, monthly progress reporting format and content, etc.); and the Commission's roles and responsibilities.

This kick-off meeting will also accomplish the following contract coordination efforts between the Commission Contract Manager, the Program Director and the Program Element Leads:

Establish the schedules for the monthly reports,

- Establish an initial schedule for the critical program reviews,
- Identify software requirements for all software products developed or enhanced in this contract.
- Concur on the uses of the program management web site.
- Discuss a plan to coordinate the PIER programmatic contracts. At a minimum, this coordination shall include producing and sharing a contact list, web site links, and research bibliographies. The plan shall also include initial schedules and protocols for future research coordination and Program Advisory Committee meetings.

The Commission Contract Manager shall designate the date and location of this meeting. The Commission Contract Manager will be responsible for recording the decisions, agreements and schedules determined at this meeting. The Program Director is responsible for reviewing these written meeting minutes and providing a written letter to the Commission Contract Manager summarizing the agreements and containing all appropriate planning information.

The deliverables are:

Written documentation of meeting agreements and all pertinent information.
Written initial schedule for future contract meetings.

Key Personnel:

_____ will be responsible for this task.

PROJECT 1.2 PROGRAM START-UP ACTIVITIES

Task 1.2.1 Public Presentation

The objective of this task is to provide PIER stakeholders, interested parties and the general public an opportunity to be introduced to the research, development and demonstration work that will be undertaken in this contract.

The Contractor shall prepare an outline of the goals and objectives of the program and make a 60-minute presentation at a half-day public presentation. This meeting will introduce all three programmatic PIER contracts to the meeting attendees. The Commission Contract Manager shall designate the date, time and location of this meeting. The Commission shall designate the other participants in the public meeting.

The deliverables are:

- A prepared 60-minute presentation (electronic copy to Contract Manager).

Task 1.2.2 Program Software Standardization

The objective of this task is to unify the formats of electronic data and documents provided to the Commission as contract deliverables. Another objective is to establish the computer platforms, operating systems and software that will be required to review and approve all software deliverables.

The Contractor shall deliver documents to the Commission Contract Manager in the following formats:

- Data sets shall be in Microsoft (MS) Access or MS Excel file format.
- PC-based text documents shall be in MS Word file format.
- Documents intended for public distribution shall be in PDF file format.
- Project management documents shall be in MS Project file format.
- Presentation documents shall be in MS Power-Point format.

Exceptions to the above must be pre-approved in writing by the Commission Contract Manager. Computer platforms, operating systems and software requirements for all software deliverables shall be listed in a Quarterly Report and approved by the Commission Contract Manager at least 90 days before the software is scheduled to be reviewed by the Commission.

The deliverables are:

- Monthly Reports. When applicable, monthly reports shall include additional file formats that will be necessary to transfer deliverables to the Commission.
- Monthly Reports. When applicable, monthly reports shall include lists of the computer platforms, operating systems and software required to review upcoming software deliverables.

Task 1.2.3 Finalize the Program Advisory Committee (PAC)

The objective of this task is to create an advisory committee for this program. The purpose of this Program Advisory Committee (PAC) will be to:

- Provide strategic guidance to the Program Management Team (consisting of the program director, the leads of each program element, and the CEC contract manager).
- Review current and future deliverables to evaluate functionality of the deliverables. Provide specific suggestions/recommendations for needed adjustments, refinements, or enhancement of the deliverables.
- Provide guidance in research direction. The guidance should include, but not be limited to, scope of research; research methodologies; timing; coordination with other research, etc. The guidance may be based on:
 - technical area expertise
 - knowledge of market applications
 - linkages between the programmatic contract work and other past, present or future research (both public and private sector) they are aware of in a particular area
- Evaluate tangible benefits to California and provide recommendations, as needed, to enhance tangible benefits.
- Provide recommendations regarding information dissemination, market pathways or commercialization strategies relevant to the research products.

The PAC should be composed of 15-20 diverse professionals. This PAC size shall be a target that the Contractor strives to achieve. This number can vary depending on potential interest and time availability, however 15 should be considered a practical minimum. The PAC shall be composed of qualified professionals spanning the following disciplines:

- Researchers knowledgeable regarding the program elements
- Market Applicators
 - Designers (Engineers/Architects)
 - Builders
 - Building Operators

- Public Interest Market Transformation Implementers
- Product Developers
 - Equipment and Control Manufacturers
 - Other product developers relevant to individual program elements
- Public Sector Decision Makers
- Commissioning Practitioners
- DOE Research Manager
- Public Interest Environmental Groups
- Building Insurance Providers
- Property Value Assessors

The Contractor shall recruit PAC members and ensure that each individual understands the member obligations described above, as well as the meeting schedule outlined in Task 1.3.2. The Contractor may propose subsets of the PAC to contribute to specific technical elements, thereby eliminating the need for every PAC member to participate in every teleconference and meeting. This proposed PAC organization shall be pre-approved in writing by the Commission Contract Manager.

The deliverables are:

A list of PAC members that includes name, company, physical and electronic address, and phone number. A brief written explanation of the PAC organization. This document will include a delineation of which PAC members will participate in each specific technical contract element.

- Letters of acceptance, or other comparable documentation of commitment, for each PAC member.

Task 1.2.4 Document Matching Funds

The objective of this task is to document the match funds for this contract.

- The Contractor need not resubmit match fund documentation if it was provided in the Contractor's proposal and the information submitted is still valid. The Contractor, however, shall assist the Commission Contract Manager to locate this proposal information, upon request.
- In the event match fund sources change during the contract term, Contractor shall immediately notify the Commission Contract Manager for approval.

Documentation of match fund commitments shall be received, reviewed and approved in writing by the Commission Contract Manager before: 1) any PIER funds under this contract are disbursed; and 2) PIER-funded work on technical tasks may begin.

The Contractor shall provide the following information about the match funding to be used to conduct this program:

1. Amount and source of each *cash* match funding, including a contact name, address and telephone number.
2. Description, documented market or book value, and source of each *in-kind* contribution, including a contact name, address and telephone number.

If the in-kind contribution is equipment or other tangible or real property, Contractor shall identify its owner and provide a contact name, address and telephone number, and the address where the property is located.

3. Written commitment from each source of cash match funding or in-kind contributions that these funds or contributions have been secured or will be secured prior to the date(s) when the funds or in-kind contributions are required for program expenditures.

In the event the Contractor has not provided the written match fund commitments for this program by three months after the contract activation date, the Commission may, at its option and in its unfettered discretion, terminate this agreement by advising Contractor in writing that the contract will be terminated in thirty (30) calendar days.

The deliverables are:

- Written documentation of matching fund agreements or written letter declaring that there have been no changes in match fund agreements.
- Documentation of changes as they occur.

Key Personnel:

Key Subcontractors:

Task 1.2.5 Identify Required Permits

The objective of this task is to list all permits required for work completed under this contract.

Before any costs are incurred for which state-fund reimbursement will be requested under this contract, the Contractor shall prepare and submit to the Commission Contract Manager a list of all permits required for construction and/or operation of equipment or the project facility, the name, address and telephone number of the permitting jurisdictions or lead agencies, and the schedule the Contractor will follow in applying for and obtaining these permits. If no permits are required to conduct this program, the Contractor shall state this finding in writing to the Commission Contract Manager.

The deliverables are:

- Written documentation of all permits that will be required for this contract, or declaring no permits are required.
- Documentation of permits as they occur during the contract term.

Key Personnel:

_____ will be responsible for this task.

PROJECT 1.3 PROGRAM MEETINGS

Task 1.3.1 Critical Program Review Meetings

The objective of this task is for the Commission to discuss with the Contractor the status of the program and its progress toward achieving its goals and objectives.

Critical program reviews are meetings between the Contractor, the Commission Contract Manager and other individuals selected by the Commission Contract Manager to provide objective, technical support to the Commission. Meeting participants may include PIER Team Lead, Contracts Officer, Commission Technical Staff and Management. These meetings may take place at the Energy Commission offices in Sacramento, or at another, reasonable location determined by the Commission Contract Manager.

Prior to this critical program review meeting, the Contractor shall provide the task deliverable(s) to the Commission Contract Manager sufficiently in advance to allow the Contract Manager's review of the deliverable document(s) before the review meeting. If not already defined in the Work Statement, the Commission Contract Manager shall specify the contents of the deliverable document(s).

At the critical program review meeting, the Contractor shall present the required administrative and technical information, and participate in a discussion about all the program elements with the Commission Contract Manager and other meeting attendees.

Following the critical program review meeting, the Commission will determine whether the Contractor is complying satisfactorily with the Work Statement and whether the program elements are demonstrating sufficient progress toward their goals and objectives to warrant continued PIER financial support for each element.

The Commission Contract Manager will provide a written response to the Contractor indicating the Commission's conclusions and the direction to be taken as a result of those conclusions which may include directing the Contractor to not proceed with a specific element, task or to stop work.

The deliverables are:

- Recommended critical program review schedule deliverable for kickoff meeting.
- Critical program review deliverables identified in this work statement or as specified by the Commission Contract Manager.
- Updated schedule for critical program reviews, provided in the Quarterly Progress Reports as necessary.

Task 1.3.2 PAC Meetings

The objective of this task is for the PAC to provide strategic guidance to this program by participating in quarterly meetings or teleconferences.

The Contractor shall organize and lead PAC meetings with the Program Management Team on the following schedule:

Quarterly reviews with the PAC, 1 or 2 of which will be meetings at a location to be determined in consultation with the Commission Contract Manager, and the remainder to be teleconferences.

Exceptions to the above schedule must be pre-approved in writing by the Commission Contract Manager.

The Contractor shall summarize each PAC meeting or teleconference in writing.

The deliverables are:

- Suggested PAC meeting schedule.
- Draft PAC meeting agenda(s) with back-up materials for agenda items.
- Final PAC meeting agenda(s) with back-up materials for agenda items.
- Written meeting summaries.

Key Personnel:

_____ will be responsible for this task.

PROJECT 1.4 ANNUAL TECHNICAL BRIEFINGS

The objective of this project is for the contractor to share the progress and results of the research conducted in the program with state and national buildings research communities.

The Contractor shall present at least one technical briefing on the research being conducted in this program during each year of this contract. The Contractor shall provide a written summary of the technical briefing that includes but is not limited to the event and the date, a copy of the presentation (including any handouts that were provided the attendees), the approximate number of attendees, and the results of the presentation (e.g., research products incorporated into a broader scope of work by others).

The deliverables are:

- A written summary of each technical briefing given by the Contractor on the subject of research conducted within the program.

Key Personnel:

_____ will be responsible for this task.

PROJECT 1.5 PROGRESS REPORTS

All public reports shall be delivered to:

Accounting Office, MS-2
California Energy Commission
1516 9th Street, 1st Floor
Sacramento, CA 95814

All confidential reports shall be sealed and marked "Confidential Deliverable" and submitted to:

Judith Efhan
Contracts Office, MS-18
California Energy Commission
1516 9th Street, First Floor
Sacramento, CA 95814

Task 1.5.1 Monthly Reports

The objective of this task is to periodically verify that satisfactory and continued progress is made towards achieving the research objectives of this program.

The Contractor shall prepare a Monthly Progress Report to the Commission Contract Manager, starting after contract execution and shall continue each following month until the Commission Contract Manager has accepted the Final Report. Attachment 1 provides the format and content requirements for these reports. Monthly updates, highlights, and issues will be reported on the password protected program web site.

All interim research results (e.g., test data, product mock-ups, field site descriptions, preliminary analyses, draft reports) necessary to allow the Commission Contract Manager to review contract progress and gauge the quality of research results shall be provided in the Monthly Reports and Monthly Highlights, including evidence of software testing as appropriate for software developed or enhanced in this contract.

The software test methods shall be discussed and agreed to during a contract kickoff meeting (Project 1.1). The Commission Contract Manager will not accept final deliverables nor approve invoices for deliverables without prior review and approval of progress reports and draft deliverables.

The deliverables are:

- Written Monthly Progress Reports due within 30 days of month's end. A Monthly Progress Report is not required when Year-end reports are due.
- Monthly highlights reported through the program web site. Monthly highlights are not required when Year-end Reports are due.

Task 1.5.2 Year End Reports

The objective of this task is to annually verify that the Commission is receiving the research products expected from this contract. A further objective of this activity is to revise Year 2 & 3 work, if necessary, to incorporate the recommendations of the PAC and the Commission that will result from the project deliverable and critical program reviews. Attachment 2: Year-end and Final Report Outline and Format provides a suggested framework for this report.

The Contractor shall prepare and submit to the Commission Contract Manager a Year End Report for each of the first two years of this contract, describing the original purpose, approach and results of the year's work. This shall include a summary of deviations and corrections to the original research plans. This report shall also include draft research plans with deliverables for the following contract year. These research plans shall incorporate changes in the following year's work plans with deliverables to reflect the results of PAC reviews and the Commission Critical Program Review conducted in the previous year. Year End Reports shall also include updates to the baseline conditions, projected outcomes and performance metrics for each program element.

The deliverables are:

- Draft Year-end Report(s).
- Final Year-end Report(s) due within 30 days of year end.

Key Personnel:

_____ will be responsible for this task.

PROJECT 1.6 FINAL REPORT

The Final Report shall be a public document. If the Contractor has obtained confidential status and will be preparing a confidential version of the final report as well, the Contractor shall perform the following tasks for both the public and confidential versions of the Final Report.

Task 1.6.1 Final Report Outline

The Contractor shall prepare and submit to the Commission Contract Manager for review an outline of the Final Report describing the original purpose, approach and results of the program. This report will cover the accomplishments of the entire three-year contract term. Attachment 2: Year-end and Final Report Outline and Format provides a suggested organization for this outline.

The outline shall be submitted to the Commission Contract Manager who shall determine if the outline is satisfactory. If the outline is satisfactory, the Commission Contract Manager will provide the

Contractor written comments, which indicate how the outline can be improved. The Commission Contract Manager shall review the outline and determine if it is satisfactory. If the Commission Contract Manager determines that the outline is unsatisfactory, the Contractor shall revise the outline until it meets the Commission Contract Manager's requirements. The Commission Contract Manager shall issue to Contractor a written approval of the outline.

The deliverables are:

- ◆ Written Final Report Outline

Task 1.6.2 Draft Final Report for Comment

Contractor shall prepare and submit to the Commission Contract Manager a draft Final Report on the program. The format of the report shall follow the approved outline.

The Commission Contract Manager will review and provide approval or comments on the draft Final Report within 30 calendar days from receipt of the draft. The Contractor and the Commission shall in good faith discuss such issues and the Contractor shall take actions to address the Commission's concerns.

The Contractor shall revise the draft final report incorporating the Commission Contract Manager's corrections and required changes. Upon finding the revised draft to be satisfactory, the Commission Contract Manager shall provide to the Contractor written approval of it.

The deliverables are:

- ◆ Written Draft Final Report

Task 1.6.3 Final Report

No later than 60 calendar days after receiving the Commission Contract Manager's written approval of the draft Final Report, Contractor shall make final corrections and changes, and submit two unbound copies of each version of the Final Report to the Commission Contract Manager. This task shall be deemed complete and accepted by the Commission only when the Commission Contract Manager approves the Final Report in writing. Upon approval, the Contractor shall submit two unbound copies of the Final Report to the Commission Contract Manager.

The deliverables are:

- ◆ Written Final Report

Key Personnel:

_____ will be responsible for this task.

PROJECT 1.7 FINAL MEETING

The objective of this project is for the Contractor to meet with the Commission to present findings, conclusions, and recommended next steps (if any) for the program. This meeting will cover the accomplishments of the entire three-year contract term.

The Contractor shall meet and discuss with the Commission Contract Manager the following contract closeout items:

- What to do with any state-owned equipment (Options, see contract paragraph 7).
- Commission's request for specific "generated" data (not already provided in contract deliverables).
- Need to document Contractor's disclosure of "subject inventions" developed under the contract.
- Need to file UCC-1 form re: Commission's interest in patented technology.
- Need to transfer public web site materials (pages, underlying data, and links) to the Commission.
- Other "surviving" contract provisions, such as royalty provisions(contract paragraph 19).

The deliverables are:

Meeting participation

Written documentation of meeting agreements and all pertinent information.

Key Personnel:

Key Subcontractors:

_____ will be responsible for this task.

ATTACHMENT 9 cont'd

**EXHIBIT B
TASK DELIVERABLES, SCHEDULES
ELEMENT 1**

Task No. and Name	Deliverable	Start Date	End Date	PIER Budget	Subcontractor
ELEMENT 1		4/1/01	3/31/05		
1.1 Kick-off Meeting	Written documentation of meeting agreements and future contract meetings				
1.2.1 Public Presentation	60-minute presentation				
1.2.2 Program Software Standarization	Monthly Reports				
1.2.3 Finalize Program Advisory Committee	List of PAC members, PAC description, letters of acceptance				
1.2.4 Document Matching Funds	Documentation of matching fund agreements				
1.2.5/6 Identify & Obtain Req'd Permits	Document and obtain required permits				
1.3.1 Critical Program Review Meetings	Meeting participation and written documentation of meeting agreements				
1.3.2 PAC Meetings	PAC meeting schedule & written meeting summaries				
1.4 Annual Technical Briefings	Written summary of each technical briefing				
1.5.1 Progress Reports	Monthly written reports				
1.5.2 Year End Reports	Year-end Reports				
1.6.1 Final Report Outline	Final Report Outline				
1.6.2 Draft Final Report	Draft Final Report				
1.6.3 Final Report	Final Report				
1.7 Final Meeting	Contract Closeout				

EXHIBIT A

**WORK STATEMENT
ELEMENT 2**

(Beginning of Technical Elements)

ELEMENT 2 – *(Insert Technical Element Title)*

PROBLEM STATEMENT

(Insert Text)

Key Barriers

(Insert Text)

Advancement of Science or Technology

(Insert Text)

Need for PIER Program Funding

(Insert Text)

TECHNICAL AND ECONOMIC GOALS AND OBJECTIVES

(Insert Text)

PROJECT LIST

This program element's work scope involves the following technical projects:

Project 2.1. Project Start-up Tasks and Reporting Activities

Project 2.2. (Insert Project Title)

Project 2.3. (Insert Project Title)

Project 2.4. (Insert Project Title)

PROJECT 2.1 Project Work Statements *(Insert Project Title)*

Project Objectives:

(Insert Text)

Prior Research:

(Insert Text)

Baseline Conditions:

(Insert Text)

Projected Outcomes:

(Insert Text)

Performance Metrics

(Insert Text)

Project Work Plans

(Insert Text)

Task List:

Task 2.1.1 *(Insert Task Title)*

The objective of this task is to *(Insert Task Objective)*

The Contractor shall:

(Insert Contractor actions)

The deliverables are:

2.1.1a *(Insert deliverable description)*

2.1.1b *(Insert deliverable description)*

Task 2.1.2 *(Insert Task Title)*

The objective of this task is to *(Insert Task Objective)*

The Contractor shall:

(Insert Contractor actions)

(Insert Contractor actions)

The deliverables are:

2.1.2a *(Insert deliverable description)*

Task 2.1.3 *(Insert Task Title)*

The objective of this task is to *(Insert Task Objective)*

The Contractor shall:

(Insert Contractor actions)

The deliverables are:

2.1.3a *(Insert deliverable description)*

Key Personnel:

(Insert Name), (Insert Affiliation)

PROJECT 2.2 *(Insert Project Title)*

(Follow the same format as Project 2.1, above.)

EXHIBIT A

**WORK STATEMENT
ELEMENT 2**

(Beginning of Technical Elements)

ELEMENT 2 – *(Insert Technical Element Title)*

PROBLEM STATEMENT

(Insert Text)

Key Barriers

(Insert Text)

Advancement of Science or Technology

(Insert Text)

Need for PIER Program Funding

(Insert Text)

TECHNICAL AND ECONOMIC GOALS AND OBJECTIVES

(Insert Text)

PROJECT LIST

This program element's work scope involves the following technical projects:

Project 2.1. Project Start-up Tasks and Reporting Activities

Project 2.2. (Insert Project Title)

Project 2.3. (Insert Project Title)

Project 2.4. (Insert Project Title)

PROJECT 2.1 Project Work Statements *(Insert Project Title)*

Project Objectives:

(Insert Text)

Prior Research:

(Insert Text)

Baseline Conditions:

(Insert Text)

Projected Outcomes:

(Insert Text)

Performance Metrics

(Insert Text)

Project Work Plans

(Insert Text)

Task List:

Task 2.1.1 *(Insert Task Title)*

The objective of this task is to *(Insert Task Objective)*

The Contractor shall:

(Insert Contractor actions)

The deliverables are:

2.1.1a *(Insert deliverable description)*

2.1.1b *(Insert deliverable description)*

Task 2.1.2 *(Insert Task Title)*

The objective of this task is to *(Insert Task Objective)*

The Contractor shall:

(Insert Contractor actions)

(Insert Contractor actions)

The deliverables are:

2.1.2a *(Insert deliverable description)*

Task 2.1.3 *(Insert Task Title)*

The objective of this task is to *(Insert Task Objective)*

The Contractor shall:

(Insert Contractor actions)

The deliverables are:

2.1.3a *(Insert deliverable description)*

Key Personnel:

(Insert Name), (Insert Affiliation)

PROJECT 2.2 *(Insert Project Title)*

(Follow the same format as Project 2.1, above.)

ATTACHMENT 9 cont'd

EXHIBIT B
TASK DELIVERABLES, SCHEDULES AND BUDGETS
ELEMENT 2

ELEMENT 2	DELIVERABLES	START DATE	END DATE	CEC PIER REIMBURSABLE	SUBCONTRACTOR	MATCH FUNDS
2.1 Start-up Task						
2.1.0 Project 2.1:						

EXHIBIT A

**WORK STATEMENT
ELEMENT 3**

(Continuation of Technical Elements)

(NOTE: Start new work statement for Element 3 and any subsequent Elements)

ELEMENT 3 - (*Insert Element Title*)

(Follow the same format as ELEMENT 2)

Exhibit C

Budget

- | | | Personal Services | | Operating Expenses | | | | Other | | | Total |
|-------------------------|------------------------------|-------------------|--------------------|--------------------|-----------|--------|-------|-------------------|--------------|------|-------|
| | | Direct Labor | Fringe Benefits | Materials | Equipment | Travel | Misc. | Indirect Overhead | G&A Overhead | Fee* | |
| | Project Start-Up Tasks | | | | | | | | | | |
| Task #1.1 Total | | | | | | | | | | | |
| Task #1.2 Total | | | | | | | | | | | |
| Task #1.3 Total | | | | | | | | | | | |
| Task #1.4 Total | | | | | | | | | | | |
| Task #1.5 Total | | | | | | | | | | | |
| Task #1.6 Total | | | | | | | | | | | |
| Task #1.7 Total | | | | | | | | | | | |
| | Project Start-Up Totals | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | | \$0 |
| | Project Technical Activities | | | | | | | | | | |
| Task #__ Total | | | | | | | | | | | 0 |
| Task #__ Total | | | | | | | | | | | 0 |
| Task #__ Total | | | | | | | | | | | 0 |
| Task #__ Total | | | | | | | | | | | 0 |
| | Project Technical Subtotals | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| | Reporting Activities | | | | | | | | | | |
| Task #__ Total | | | | | | | | | | | 0 |
| Task #__ Total | | | | | | | | | | | 0 |
| Task #__ Total | | | | | | | | | | | 0 |
| | Report Activity Subtotals | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | | \$0 |
| | | Direct Labor | Fringe Benefits | Materials | Equipment | Travel | Misc. | Indirect Overhead | G&A Overhead | Fee | Total |
| CEC-Reimbursable Totals | | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| | | Personal Services | Operating Expenses | Other | Total | | | | | | |
| | | \$0 | \$0 | \$0 | \$0 | | | | | | |

400-00-401

Detailed Exhibit C, Budget, Instructions

Program Budget

Using the categories identified below, prepare four itemized Exhibits C, Budget, as follows:

- an overall PIER reimbursable budget by element, including all element costs
- a budget containing only the Prime Contractor's costs, identify DVBE's
- a budget containing only the subcontractors' costs, identify DVBE's
- a match funded budget which documents all other sources of funding, identify DVBE's

Use Attachment 9, Exhibit C, (Excel files) to prepare these budgets.

Budgets for Start-up Tasks and Reporting Activities

For the Administrative Element, the budgets itemized for the Project Start-up Tasks and the Reporting activities (using the Exhibit C form) should only include the efforts required for the Program Director and the administrative staff. On Exhibit C, under the Project Technical Activities heading, include the following:

- 1) Program Management and Administration;
- 2) Program Advisory Committee; and
- 3) Critical Program Review

The budgets itemized for each technical project (also using Exhibit C) should include the project lead and project staff efforts for the Project Start-up Tasks and Reporting Activities.

If the Commission eliminates a certain project out of the overall program proposal, the Commission will eliminate the project budget, as delineated in Exhibit C for that project. This will include both the Project Technical Activities as well as the Project Start-up Tasks and Reporting Activities for this particular project

1. ***Personal Services***

Include projected increases in hourly rates & fringe to cover each year of the contract period

- Direct Labor, including hourly rates, hours, classifications/names
- Fringe Benefits, percentage and applicable classifications

2. ***Operating Expenses***

- Materials--Identify those materials that are estimated to be over \$5,000 in value and dedicated to the program.
- Equipment--Identify each piece of equipment that is estimated to be over \$5,000 in value proposed for purchase using PIER funds. Please refer to Attachment 9, Contract Terms and Conditions, for restrictions that apply to the purchase of equipment with State funds. Subcontractors supplying equipment must be budgeted in the equipment category. We usually suggest that equipment be purchased with match funds.
- Travel--Identify all travel expenses for the program for which reimbursement will be sought. Indicate the number of trips to be taken and the destinations and estimated costs. Please see Attachment 9, Terms and Conditions for travel reimbursement rates.
- Miscellaneous expenses--Any expense not included in any of the other categories.

3. ***Other*** (attach audit documentation to verify rates)

You must include documentation in your cost proposal to support your General and Administrative rate and Overhead rate. If the Federal Defense Contracting Audit Agency (DCAA), any other governmental entity or private audit firm has audited and accepted your rates, please provide this documentation

- *Indirect Overhead Rate* -- list percentage, items covered and application to specific categories.
- *General and Administrative Overhead Rate*--list percentage, items covered and application to specific categories.
- *Fee (profit) Rate* -- list percentage, basis and application to specific categories. Profit cannot exceed 10%. The Prime Contractor is not allowed to add profit to subcontractor invoices.

4. ***Total Expenditures***

- Sum of all the categories.

BUDGET

OVERHEAD, GENERAL & ADMINISTRATIVE, AND PROFIT RATES

[illegible]

EXAMPLE ONLY**EXHIBIT E
PRE-EXISTING INTELLECTUAL PROPERTY**

For _____ Corporation

Description of property	Basis for its Proprietary Nature (Serial No./Patent No.)
Improvement of _____ Production From Lignocellulose	Patent Pending (08/833,999-*)
(08/879,999-*) (note1)	Patent Pending
Development of High-_____ Resistant Escherichia Coli	Patent Pending (08/888,900-*)
Recombinant Uptake System	Patent Pending (08/777,222-*)
Recombinant Cells that Chromosomally Integrate Heterologous Genes	Patent Pending (09/111,000-*)
Interim Report to _____ by _____	Trade Secret
Supplementary Results on batch hydrolysis of Sugar cane bagasse hemicellulose	Trade Secret
Pilot Project for extraction and purification of taxanes(<i>Final Report September 1997</i>)	Trade secret
Process for preparing a high purity chemical free cellulose form a chemical	<i>Patent Corporate Treaty Patent pending Canada -98</i>

* means Patent Pending and no assign Patent Number yet.

Note 1: Title of patent pending reveals significant business sensitive information . Title is being withheld until patent is issued. Serial Number identifies the item in question.

SECTION 3
QUESTIONS AND ANSWERS

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

**Questions & Answers**

From the Pre-bid Conference

On July 27, 2000 for

RFP #400-00-401

Administrative**General**

1. *Can G&A and overhead be charged by the prime contractor on subcontractor services?*

Yes. However, the prime contractor cannot charge a Profit on the subcontractor's invoice. See Exhibit C, Budget.

2. *Can an individual be listed as a subcontractor on more than one proposal?*

Yes, an individual or company can only submit one proposal as a prime contractor, but there is no limit to that prime contractor being a subcontractor in multiple proposals.

DVBE

3. *Do federal government agencies, such as National Laboratories, need to comply with the State of California DVBE requirements?*

No. The federal government and any other government agency is exempt from DVBE compliance.

4. *If a private contractor has a federal agency as a subcontractor, do the state's 3% DVBE requirements apply to the total cost of the contract or the percent of the contract completed by the private contractor (the total contract costs minus the costs for the federal subcontractor)?*

The state's 3% DVBE requirements apply to the total contract amount.

Technical**General**

5. *Has the gap analysis been documented in a report, and if so, is it available?*

No, the gap analysis was an internal exercise completed by the PIER Buildings Team to help identify targets for this solicitation. This work was shared with the public at the workshop, but it has not been documented in a written report.

6. *Is marketing research appropriate for PIER funding?*

Market research is a broad category and it is difficult to provide a generic response to this question without specific information on the nature of the proposed work. In general, market research which is conducted to better characterize and focus energy research efforts would be appropriate as a supporting task of a larger research effort. The research program proposed must address advancements to science or technology. However, the proposed research does not need to be hardware-oriented. Analyses that advance science and strategies to incorporate energy efficient products and/or practices in the target areas are also appropriate for this solicitation.

7. *Given the \$1M budget and the four year contract term, are you anticipating regular and moderate work efforts over the four-year period?*

No, not necessarily. The contract term is determined by the fund encumbrance dates, which is four years in this case. The funds should be budgeted according to the breadth and depth of the planned work. The program work is anticipated to take one to four years to complete, depending on the specifics of the proposal.

8. *Is it appropriate to include future plans for the proposed project results?*

Only proposed research activities that will be funded through this solicitation are evaluated. However, we encourage bidders to describe future research stages beyond the term and/or scope of the proposed projects to provide further context as appropriate. This includes coordinated research activities in areas outside the targets for this RFP. There are evaluation criteria in this RFP that indicate the importance of product development knowledge, market awareness and strategic planning.

Targets

9. *Are the targets in this RFP the same as those presented by staff at the workshop on June 22, 2000?*

Yes, to a large degree. Prior to that workshop we also considered residential lighting and appliances as potential target areas for this solicitation. The workshop discussions, information regarding research currently funded in these areas and our analysis of the need for PIER funding in these areas led us to exclude these residential end uses from the targets for this particular RFP.

10. *Are the examples provided in Section III, Page 9 & 10 indicative of preference for proposal topics?*

No, the examples listed are meant to provide context for the target areas identified. These examples by no means exhaust the science and technology research that is appropriate to propose in this solicitation.

11. *How closely do proposals have to reflect the examples listed?*

Again, these examples were provided to add context to the target areas listed. Proposals do not need to reflect the examples listed, but they do need to include justifications for why the proposed research addresses the target areas.

12. *Will proposals that focus on residential indoor air quality be considered responsive to the targets?*

No, unless the research is also tied back to the identified targets. We plan to make Indoor Environmental Quality (IEQ) the focus of a future PIER Buildings solicitation.

13. *Will proposals that address the heat island effects or other energy use reductions in residential communities be considered responsive to the targets?*

Yes, if the projects are adequately justified in terms of the identified targets, as well as the other evaluation criteria. (Section V, Page 36)

14. *Will proposals that focus on residential demand control and load shifting be considered responsive to the targets?*

Yes, if the projects are adequately justified in terms of the identified targets, as well as the other evaluation criteria. We will consider demand reduction as well as energy reduction technologies research in this solicitation. Demand reduction strategies have potential benefits to the California electricity ratepayers in the form of both cost reductions and system reliability.

15. *Will proposals that focus on residential lighting be considered responsive to the targets?*

No, residential lighting is not a research area targeted in this solicitation unless the research is specifically tied back to the identified targets.

16. *Will research on technologies that couple appliances with water heaters be considered responsive to the targets?*

Yes, we have included multi-functional devices as an example under the residential water heating target area.

17. *Can the example “Metrics/diagnostics to assess comfort in residences” (Section III, Page 9) be clarified? Diagnostic and commissioning tools are generally used to assess operation of mechanical and electrical equipment.*

We are using the term “diagnostics” in a more general way, to describe the science and tools needed to assess occupant comfort in residential buildings.

18. *Will proposals that involve remote monitoring and automated diagnostics be considered responsive to the targets?*

No, unless the research is also tied back to the identified targets. As this question relates to demand reduction, please see the answer to question #14.

19. *Will research on hydronic space conditioning be considered responsive to the envelope or water heating targets?*

This research area would probably fit best under the first target area, Residential technologies, strategies, or analyses related to comfort and energy efficiency. Although hot water is used in hydronic heating applications, we would not consider this a water heating technology. Similarly, while hydronic systems are most often installed in the floor, wall or ceiling of a house, we would not consider hydronic space conditioning an envelope technology.

20. *What do you mean by “envelope technologies”?*

We use this term for technologies that affect the heat transfer properties of roofs, ceilings, walls, windows and/or floors of buildings.

21. *Regarding the first target area, does anything that reduces the energy use of residential buildings fit under this category?*

No, we have shaped this target area to specifically address the dual benefits of occupant comfort and energy efficiency in California residences. One of the PIER Buildings Issues identified in our plan, as well as in this RFP (Section III, Page 12) is the importance of linking energy efficient goods and services with occupant comfort and productivity. Research projects that advance the energy efficiency of residences without comfort benefits to the occupant are not appropriate for the first target area. However the other two target areas, residential envelopes and water heating, do not require a link to comfort.

22. *Who should the research benefit?*

PIER funds must be spent on R&D that will benefit California’s electricity ratepayers. As this question relates to demand reduction, please see the answer to question #14.

Program Work Statement

23. *Should the information listed in the Program Work Statement item, Summary Table of how proposal addresses PIER Buildings Program issues, goals and objectives, be presented graphically?*

Yes, a one page graphic that presents this information should be included at the beginning of the **Program Work Statement**. The second section of the proposal, **Program Impacts**, should include detailed explanations in narrative form of how the proposed program will address the Buildings Program issues, goals and objectives.

24. *Should projects be listed under multiple elements if they address more than one target?*

No, each research project belongs within one and only one technical element. A technical element should be a collection of projects that have greater value when conducted together than they would have as individual projects due to the synergies involved. These projects may address a common target area but do not necessarily need to do so. These synergies can be in the form of shared data, common market audiences, or

connections within the product development life cycle, for example. The projects are not necessarily linked by the fact that they address the same target area.

The target areas should not become part of the research effort hierarchy defined in Section IV, Page 22 of the RFP. We are asking you to describe how the projects address the target areas in the **Program Description** section of the technical proposal. Each project may address one or more target areas. Addressing a common target is not a sufficient linkage by itself because that alone does not provide added value.

Programmatic Proposal

25. *Given the funding level of this RFP, how many partners do you expect to be included in the proposals?*

We are not looking for a specific number of individuals or organizations within the program team. We will evaluate the team based on diversity and appropriate balance of representation in knowledge, skills, market connection and experience. We are trying to encourage collaboration between researchers of related science and technologies to avoid unnecessary duplication and to gain synergistic value. The goal is to have a diverse team which includes appropriate collaboration between related research efforts and market partners.

26. *Are all the sources of match funding listed (Section IV, Page 29) necessary in each proposal?*

No, this list was provided to exemplify the types of match fund sources that are typical for PIER Buildings contracts.

27. *If we propose five projects, each at a cost of \$300K, will the Commission choose a subset of these projects that adds up to \$1M or less?*

No, a proposal which proposes a budget greater than \$1M would be rejected at the technical screening stage of the evaluation process. This is a request for proposals, not a competitive negotiation, so we cannot negotiate with the bidder on the proposal scope and price. The bidder must propose a research program with a total budget at or below \$1M.

28. *What is the anticipated structure of the proposed technical elements?*

We expect bidders to propose either one or two technical elements, each with two or more research projects. The number of technical elements is not as important as the value demonstrated by linking projects within an element. The bidder has the flexibility to propose the most appropriate number of technical elements for the proposed research program.

Match Funding

29. *Does the evaluation of public vs. private benefits apply strictly to the research proposed or does it expand to future phases of work or commercialization?*

Our evaluation of match funding only applies to the proposed research. The documentation of public and private benefits on the research projects should be completed in the proposal.

30. *How do we convey enough information about anticipated private benefits without disclosing business plans that we consider confidential?*

We need enough information to determine the percentage of public vs. private benefits, but we encourage you to provide as much quantitative information as possible without disclosing confidential information. We need to be able to compare private benefits expected from the research to the public benefit expected.

31. *Is match funding required?*

No, not necessarily. The level of match funding proposed must be appropriate for the level and allocation of public versus private benefits. Match funding is not required if the proposed research exclusively generates public benefits. (Section IV, Page 28)

SECTION 4
PRE-BID CONFERENCE SIGN-IN SHEET

CALIFORNIA ENERGY COMMISSION PRE-BID CONFERENCE

RFP #400-00-401

DATE: July 27, 2000

VOLUNTARY SIGN-IN: You are not required to sign this sheet or provide any information as a condition for attending or participating in this meeting. However, if you want to receive notices of future meetings on today's topics, or be identified as a small or disabled veteran business enterprise, please provide the requested information in the spaces below. A copy of this list will be mailed with the questions and answers to all those who requested a copy of this RFP.

★ ★ Please use black blue ink only ★ ★

NAME AND COMPANY	ADDRESS AND PHONE NUMBER	SMALL OR DISABLED VETERAN BUSINESS ENTERPRISE
Kris Bradley Quantum Consulting	2030 Addison Street Berkeley, CA 94704 (510) 540-7200	
Don Felts DF Energy & Arch.	142 Minna Street, Floor 2 San Francisco, CA 94105 (415) 305-5602	
Kathy Boberg Cellex Int'l, Inc.	P.O. Box 373 Loma Linda, CA 92354 (909) 799-0204	
Michael Kiutuer-Meyer Pacific Northwest Nat. Labs	P.O. Box 999, K5-16 Richland, WA 99352	
Donald Dohrmann ADM Associates	3239 Ramos Circle Sacramento, CA 95827 (916) 363-8383	
Taghi Alereza ADM Associates	3239 Ramos Circle Sacramento, CA 95827 (916) 363-8383	
Dick Ely ADM Associates	3239 Ramos Circle Sacramento, CA 95827 (916) 363-8383	
Craig Hoellwarth Quest Consulting	9413 Cedarview Way Elk Grove, CA 95758 (916) 683-5151	
Geof Syphers XEnergy, Inc.	492 Ninth Street, Suite 220 Oakland, CA 94607 (510) 891-0446	

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Erik Dyrr XEnergy, Inc.	492 Ninth Street, Suite 220 Oakland, CA 94607 (510) 891-0446	
Marcy Beck LBNL	1 Cyclotron Road Berkeley, CA 94720 (510) 486-6156	
Mark Borman Davis Energy Group	123 C Street Davis, CA 95616 (530) 753-1100	
James Davis ICF Consulting	101 Lucas Valley Road San Rafael, CA 94915 (415) 507-7124	
Harry Misurello Aspen Systems	198 Copper Ridge Road San Ramon, CA 94583 (925) 735-5057	
Tom Cowlon Gen Praxic	461 7 th St. W., #1 Sonoma, CA 95476	
Tamara D. Austin Williams, Wallace Mgmt Conslt.	405 14 th Street, Suite 500 Oakland, CA 94612	

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NAME AND COMPANY

ADDRESS AND PHONE NUMBER

**SMALL OR DISABLED VETERAN
BUSINESS ENTERPRISE**
